



Reserved On : 06/07/2026
Pronounced On : 05/08/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 5 of 2020

With

R/CRIMINAL APPEAL NO. 196 of 2020

With

R/CRIMINAL APPEAL NO. 493 of 2020

With

**CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO.
1 of 2026**

In

R/CRIMINAL APPEAL NO. 493 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE GITA GOPI

and

HONOURABLE MR.JUSTICE L. S. PIRZADA

Approved for Reporting	Yes	No
	√	

GOHIL VANRAJSINH MADARSINH @ MADUBHA & ANR.

Versus

STATE OF GUJARAT

Appearance:

MR LAXMANSINH M ZALA(5787) for the Appellant(s) No. 1,2

MR LB DABHI, APP for the Opponent(s)/Respondent(s) No. 1

CORAM:HONOURABLE MS. JUSTICE GITA GOPI

and

HONOURABLE MR.JUSTICE L. S. PIRZADA

COMMON CAV JUDGMENT

(PER : HONOURABLE MS. JUSTICE GITA GOPI)



1. Sessions Case nos.124/15 and 153/15 were jointly tried against six accused before the Bhavnagar Sessions Judge. All the accused came to be convicted on 30.11.2019 under Section 302 of the Indian Penal Code, 1860 for life imprisonment with the fine of Rs.5,000/- with the default stipulation, in case of non-payment, to undergo further 15 days imprisonment.

1.1 The accused were also convicted for the offences with the sentence as described below:-

Sections	Sentence	Fine	Default imprisonment
Section 143 read with Section 149	one month RI	Rs.500/-	3 days
Section 147 read with Section 149	six months RI	Rs.1,000/-	7 days
Section 148 read with Section 149	six months RI	Rs.1,000/-	7 days

1.2 The offences were ordered to run concurrently along with the benefit of set-off. Accused nos.2 to 6 on bail were ordered to be taken in judicial custody immediately.

1.3 The Coordinate Bench of this Court released the convict-accused nos.3 to 6 on bail suspending the sentence vide



common order dated 12.3.2020 passed in Criminal Misc. Application no.1 of 2020 in Criminal Appeal no.5 of 2020 with Criminal Misc. Application no.1 of 2020 in Criminal Appeal no.196 of 2020 and the convict - accused no.2- Gohil Hardevsinh Fatubha was released on bail with suspension of sentence vide order dated 20.5.2020 passed by the Coordinate Bench of this Court in Criminal Misc. Application no. 1 of 2020 in Criminal Appeal no.493 of 2020. The application qua the convict – accused no.1- Gohil Jaydevsinh @ Fatubha was not pressed.

1.4 Gohil Jaydevsinh @ Fatubha approached the Hon'ble Supreme Court by filing SLP (Criminal) Diary no. 28062 of 2024, wherein the Hon'ble Supreme Court vide order dated 11.7.2024 has passed the following order:-

"Delay condoned.

We dispose of this Special Leave Petition by reserving liberty to the petitioner herein to seek expeditious disposal of the appeal before the High Court.

If a request is made by the petitioner to the High Court for early hearing of the appeal, the same shall be considered and the appeal shall be disposed as expeditiously as



possible and in accordance with law.

The Special Leave Petition is disposed of.
Pending application(s) shall stand disposed of."

- 1.5 The order of the Hon'ble Supreme Court was brought to our notice. Hence, the appeals were taken up for final hearing.
2. Criminal Appeal no.5 of 2020 was preferred by the original accused nos.3 and 4, Criminal Appeal no.493 of 2020 was by accused nos.1 and 2, while Criminal Appeal no.196 of 2020 was filed by accused nos.5 and 6 under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C." for short) giving challenge to the judgment and order of conviction and the sentence.
3. The facts of the prosecution case could be briefly stated, that on 7.4.2015, the complainant-Gandhibhai Lavjibhai, brother of the deceased, was at his diamond factory. At about 09:39 p.m., he received a phone call from his brother – Bhupatbhai (deceased) who asked him to come to 'Dhora', stating that he was threatened by Hardevsinh



(A2). The complainant reached the said place and met his brother – Bhupatbhai, from whom, he came to know that deceased had borrowed Rs.3,000/- from Hardevsinh and though the same amount was returned back, Hardevsinh was threatening him demanding more money.

- 3.1. The prosecution case further is that after 10 minutes of the conversion, between the complainant and the deceased, the accused persons came there and had altercation with the complainant and the deceased.
4. As per the prosecution case, Hardevsinh (A2) and Mahendrasinh (A6) caught hold of the complainant, while Vanrajsinh (A3), Chhanubha (A4) and Shaktisinh (A5) caught hold of the deceased, and Jaydevsinh (A1) pulled out a knife from his waist and inflicted a knife blow on the chest of the deceased. The complainant got frightened and therefore, he escaped from the clutches of Hardevsinh and Mahendrasinh and after going some distance, he noticed that his brother – Bhupatbhai had fallen down and therefore, he returned back to his



brother – Bhupatbhai. As per the prosecution case, all the six accused escaped from the place of incident on their three motorcycles.

5. The prosecution case further records that the deceased – Bhupatbhai was not able to speak and then, one Vipulbhai (PW14) and Shambhubhai (PW15) arrived there and the deceased was taken to the hospital, where he was declared dead during the treatment.
6. Learned advocate Mr. Laxmansinh M. Zala for all the appellants submitted that the conviction under Section 302 of the IPC is not on right appreciation of the evidence. The learned Trial Court Judge has erred in coming to the conclusion to find guilt for the offence punishable under Section 302 of the IPC, causing murder of the deceased. Learned advocate Mr. Zala submitted that the learned Trial Court Judge ought to have appreciated that though the prosecution case shows three eye-witnesses to the incident, (i) Kanjibhai Lavjibhai Vegad (PW12) (Exh.47), (ii) Vipulbhai Banabhai Solanki (PW14) (Exh.52), and (iii) Shambhubhai



Bholabhai Vegad (PW15) (Exh.53), while the record as per the evidence would prove that all the three witnesses who claimed to be the eye-witnesses, were actually not present there. As per their evidence, the injured was immediately taken to the CHC centre and hospital, none of these witnesses had informed the police about the incident, nor gave FIR, though claimed to have been the witness to the incident.

- 6.1 Learned advocate Mr. Zala further submitted that PW14– Vipulbhai claims that he was the person who had brought the deceased to the hospital by lifting the deceased in the injured state, the clothes of Vipulbhai were never stained with blood, while the evidence of the Doctor clarifies that the clothes of the deceased were wet with blood and blood was oozing from the injury of the deceased. Thus, it was contended by Advocate Mr. Zala that it would be impossible to believe Vipulbhai as PW14 to be the person who had witnessed the incident. Mr. Zala, also contended that though the Doctor had inquired from Vipulbhai about the incident, he had failed to name



the assailants. Mr. Zala further stated that in the same way, PW12 – the complainant who is the real brother of the deceased, had not named the accused before the Doctor as well as PW15 – Shambhubhai had not informed the Doctor. From the evidence that had come on record, learned advocate Mr. Zala stated that when the police was present throughout with these witnesses, none of them as the eye-witness to the incident, had informed the police about the incident nor had given the name of accused as the assailants which itself creates doubt on the prosecution case, where police had not even cared to know about the incident or the names of aggressors.

6.2 Learned advocate Mr. Zala referring to the cases filed against the witnesses and the political rivalry prevalent in the village interconnecting the accused and the witnesses, submitted that the case has been framed against the accused, no firm motive could be proved and the object for forming unlawful assembly for the purpose of demand of money by the accused – Hardevsinh (A2) has not been proved by way of examining independent



witnesses.

6.3 Advocate Mr. Zala submitted that the accused A3 ,A4 and A5 had made a representation to the Investigating Officer with regard to the *alibi*. The Investigating Officer failed to investigate the representation. In that connection, Mr. Zala submitted that the learned Trial Court Judge was required to appreciate the evidence of DW1 – Exh.90 and DW2 – Exh.91, whereby their evidence clearly establishes the *alibi* of appellants – accused A3, A4 and A5. Mr. Zala thus submitted that the conviction and the sentence is against the weight of the evidence and, is required to be interfered with.

6.4 It was the further contention of learned advocate Mr. Zala that the learned Trial Court Judge failed to appreciate the fact that there was election of Sarpanch at Village Gundi and two groups were contesting the election. The group of the appellants – accused nos.1 and 2, was elected in the Gram Panchayat election, while the group of the complainant lost the election and therefore, the male family members as accused nos.1



and 2 came to be wrongly roped in the serious offence. Mr. Zala submitted that the learned Trial Court Judge failed to appreciate the fact that at the place of the incident, there was no electricity or light available and that during the night hours, it was hardly possible to see each other. The local FSL Officer as PW10, though immediately, had visited the place of incident, could not observe any blood stains or any other noticeable thing there. Mr. Zala submitted that when the police officer was present, the names of the accused were never mentioned. It was submitted by learned advocate Mr. Zala that the complainant and his group are headstrong persons and after the alleged incident, houses and business premises were put to fire and destroyed for which the complaint was given by the family members of the accused nos.1 and 2 being CR no.45 of 2015 on 7.4.2015 and CR no.46/2015 on 8.4.2015.

6.5 Mr. Zala submitted that the conviction and sentence ordered by the learned Trial Court is contrary to the provisions of law, facts, evidence and the circumstances



of the case which has ended into failure of justice. Mr. Zala submitted that the evidence of the Prosecution Witnesses are not reliable, nor trustworthy to convict the accused. Reasonable suspicion along with supporting evidence was successfully raised by the accused and the burden, though was not on the accused, still the rebuttal evidence had been given by the accused raising grave suspicion on the prosecution case, still however, the learned Trial Court Judge failed to appreciate the same. Learned advocate Mr. Zala further submitted that even otherwise, circumstantial evidences also do not establish the chain to consider any case as projected by the prosecution. The inherent infirmities in the evidence and the inconsistent testimony and the material improvement made during the stage of the trial goes to the root of the case seriously affecting the credibility of the prosecution case. The conduct of the Prosecution Witnesses are highly unnatural, improbable and inconsistent with the facts, evidence and circumstances of the case.

6.6 The investigation carried out by the police is tainted and



biased, favouring the Prosecution Witnesses. Mr. Zala submitted that the investigation was not prompt and impartial. The evidence of the PSO (PW17) proved on record suggests that there is unexplained delay in filing the FIR and prior to the complaint of the present matter, on 7.4.2015, the complaint had been filed under Sections 395, 436, 450 of the IPC and Section 135 of the Gujarat Police Act against the deceased and the witnesses, which were in total against 16 persons, while on 8.4.2015 too, for the same Sections, complaint was filed against 17 persons and thus submitted that the present appellants–accused have been wrongly framed in the matter. Advocate Mr.Zala submitted that the learned Trial Court Judge had failed to conclude that the witnesses are interested untrustworthy and unreliable and had become witnesses to wrongly frame the accused only with an interest to find conviction with political motive.Thus, Advocate Mr. Zala urged to set aside the conviction and the order of sentence and acquit the accused.

6.7 Mr. Zala has relied upon the following decisions:



- (1) **Kabhaibhai @ Kaliyo Punambhai Parmar v. State of Gujarat** dated 4.2.2014 passed in Criminal Appeal no.1647 of 2008.
- (2) **State of Gujarat v. Rajput Anil Maganlal**, rendered in Criminal Appeal no.894 of 1995.
- (3) **Vijay Singh @ Vijay Kr. Sharma v. State of Bihar, 2024 (0) AIR (SC) 4846 : 2024 (0) AIJEL-SC 74080.**
- (4) **State of Gujarat v. Suraj @ Shant Pannabhai Solanki, 2012 (0) AIJEL-HC-229183.**
7. Mr. L.B. Dabhi, learned APP stated that the motive though he is not required to be proved by the prosecution in such fatal cases of murder, here in the present case, by examining the witnesses, the motive to kill with the common object of all the accused gets explicitly proved, where it is the case of the prosecution that the accused – Jaydevsinh had lended Rs.3,000/- to the deceased and though the money was returned back, accused no.1 was making atrocious demand of Rs.7,000/- and therefore, in prosecution of common



object by forming unlawful assembly, all had come on 7.4.2015, accused no.1 was having knife in his hand, with that, had given a blow on the chest of the deceased. Mr. Dabhi, learned APP has submitted that the complainant as a witness has stated the facts as he was the eye-witness and the complainant – Kanjibhai (PW12) as brother of deceased has stated the facts and those facts have been corroborated by the witnesses PW14 – Vipulbhai Solanki and PW15 – Shambhubhai Vegad, who too are the eye-witnesses to the incident. Mr. Dabhi submitted that the motive has not been questioned in the cross-examination. PW16 Arvind Lavji, another brother of deceased had corroborated the fact of illegal demand of money by Hardevsinh from the deceased, where the deceased 2 days prior, had informed PW16 about such demand of money.

7.1 Mr. Dabhi, learned APP submitted that the place of incident and the presence of the accused are proved by the witnesses. The CDR on record proves that prior to the incident, the deceased had talked with the



complainant – Kanjibhai at about 21:39:18 hours and the deceased had also talked with Arvindbhai – PW16 at 22:27:11 hours and thus, submitted that the motive and the phone calls corroborated by the evidences of the witnesses prove the common object of all the accused.

7.2 Mr. Dabhi submitted that the blow was not given by an ordinary domestic knife, and the discovery Panchnama clearly shows the intention. The deceased was informed by the accused that they were coming at the place of incident who in turn had informed his complainant brother and therefore, the brother had come at the place and in his presence, the incident had taken place. All the accused persons had come on a motorcycle and with the evidence of other eye-witnesses and the corroborative evidence of the Doctor, with the history recorded proves the murder. APP further submitting that recovery of the weapon was from the bushes, not accessible to the common public and hence, the same is required to be believed to link the accused with the incident and thus, urged to dismiss the appeal.



7.3 Mr. Dabhi, learned APP has relied upon the following decisions:-

- (i) **Balvir Singh v. State of M.P., (2019) 15 SCC 599**
- (ii) **Mohd. Naushad v. State (NCT of Delhi), (2024) 12 SCC 494**
- (iii) **Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1**
- (iv) **Bharatsinh Pratapsinh Parmar v. State of Gujarat, 2009 SCC OnLine Guj 4998**

8. On the basis of the arguments raised and on perusal of the record, it transpires that PW12 – Kanjibhai Lavjibhai Vegad, the complainant, PW14 – Vipulbhai Banabhai Solanki and PW15 – Shambhubhai Khodabhai Vegad had been examined as eye-witnesses. PW16 – Arvind Lavjibhai, brother of the deceased to substantiate the case of the prosecution of the demand of money by the accused and PW13 – Kishorbhai Shamjibhai was examined to corroborate the fact that he had the knowledge of the motive to the incident and that he had accompanied PW16 – Arvindbhai Lavjibhai to Government Hospital on the motorcycle.



9. PW1 to PW8 were examined as Panch witnesses, PW9 and PW11 were the Doctor witnesses, PW10 was the local FSL Officer. PW17 as PSO, PW18 as police witness investigating the case and PW19, is the Investigating Officer who filed the chargesheet were examined by the prosecution. PW20 – Pranav Mahendrakumar, was the Nodal Officer from Bharatiya Airtel, PW21, a nodal officer from Idea Cellular.
10. From the defence side, accused examined DW1 – Rameshbhai Dilawar and DW2 – Sanjaysinh Dhruvsinh Gohil.
11. In the further statement of the accused, they have denied all the material evidences, which were referred to and have stated that they are innocent and falsely they have been implicated in a very serious offence. The accused no.1 had stated that he had not given any knife blow to the deceased, nor at that time, Shaktisinh Raghubha, Chanubha @ Chhanubha Manubhai Gohil or Vanrajsinh had caught hold of the deceased. The deceased has not borrowed any money from him. The



real accused could not be found and therefore, falsely they have been implicated in the offence under political enmity. The accused no.2, expressing him, to be innocent, has reiterated the same statement as given by accused no.1.

12. Accused no.3, falling in line to the statement given by accused nos.1 and 2, has further stated that he was not present at the time and place of the incident, at that time, as it was month of Chaitra, he was with Bhuva of the village along with other persons and he was at their community Mataji's Madh in the evening from 07:00 to 11:30 p.m. and because of political enmity, he has been falsely implicated in the matter. Accused no.4 in his statement stated that he too was at Mataji's Madh between 07:00 to 11:30 p.m. on that day and along with him was accused no.3 further stating that political enmity is the reason for false implication.

13. Accused no.5 has denied the incident stating him to be innocent giving statement as stated by accused nos.1 and 2 and has further stated that he was not present at



the time and place of incident and he was playing volleyball with other friends in the backyard of Vir Bhadrasinh of the village. This accused has also stated of false implication because of political enmity in the serious offence. Accused no.6 claiming his innocence stated that he has been falsely implicated, he had not held the deceased and in that circumstances, none had inflicted knife blow to the deceased, nor had he instigated or abetted anyone. The cause for false implication in the serious offence is the political enmity.

14. In view of the arguments raised and the statement of the accused under Section 313 of the Cr.P.C., the evidence of the witnesses would require an analysis to examine the case in accordance to the charge framed, whereby the accused had been charged under Sections 302, 143, 147, 148 and 149 of the IPC on the ground that all the accused in abetment forming unlawful assembly had hatched a conspiracy with a view to recover an amount of Rs.7,000/- from the complainant's brother – Bhupatbhai, inspite of the fact that Rs.3,000/- borrowed



was already returned back. Accused no.1 – Gohil Jaydevsinh Patubha on 7.4.2015, in prosecution of the common object at about 21.50 hrs. at 'Dhora' of Village Koliyak with the knife in his hand inflicted a knife blow on the chest with an intention to kill, while the other accused had caught hold of the deceased. The accused were also proceeded under Section 135 of the Gujarat Police Act for the breach of the notification of District Magistrate.

15. PW1 – Maganbhai Surabhai was examined as a Panch witness. He stated that on 8.4.2015, the police had called him to remain as panch for the Panchnama in the case of Bhupatbhai. He along with police and Vikrambhai had reached there. The panch witness stated that the police had inquired about the death of Bhupatbhai, he had told the police that in his presence, murder had taken place. The witness stated that apart from that, he had not stated any other facts, nor the police had asked him any other thing. When he was present there, the witness stated that Kanji Lavji Vegad (PW12



complainant) was not present. Kanjibhai had shown the place of incident to the police and the witness stated that the place of incident was shown by Kanjibhai as pan shop, which was on Kuda road and that shop was of a Muslim man. He could not remember the direction of the pan shop but stated that on the eastern side was the road towards Koliyak, western side was Ghogha road and on the northern side was Kuda road and southern side was a shop of one person belonging to Vaghri community. He was not knowing the name of the owner of the pan shop, nor the name of the person belonging to Vaghri community.

16. The evidence as per the witness was recorded as a panch witness, but according to him, when the police had inquired, he is stating that the murder had taken place in his presence. The witness has not named the accused person as the murderer. According to the witness, the place of incident was shown as 'pan no Gallo' by the complainant – Kanji Lavji Vegad. The Panchnama was placed in evidence at Exh.30. The witness in his cross-



examination stated that since last 6 years, he was residing at Koliyak Village and prior to that, he was residing at Village Hoydad. He was a diamond polisher and his time of work would be morning 7.30 and in the afternoon, would come for lunch and in afternoon 2 O'Clock, he would resume his work and return back home at 9:00 in the evening. His place of work was at Koliyak. He is owning his own factory. The distance between Gundi to Koliyak according to the witness was of 1 km.

17. The panch witness has further stated that it was Kanjibhai who had come to call him, whom he was knowing since last 5 years. They were having the diamond factory in partnership, when he was called by Kanjibhai, at that time, he was at the factory. The witness affirmed that when he had signed Panchnama of the place of incident, he had not seen any blood stains or any other sign. He also affirmed that the police had not taken any sample from the place of incident. He remained at a place for about 15 minutes. He also stated that whatever he was knowing, he had informed the



police. He denied the suggestion that he has not seen the incident. The witness denied the suggestion that since the deceased was of Koli community and he too was of the same Koli community and therefore, has given false evidence.

18. The overall appreciation of the evidence of PW1 would draw a conclusion that the witness had told the police that the murder had taken place in his presence, but the witness has not named the accused. The place of incident, which is shown by the complainant – Kanjibhai, was pan no gallo. Kanjibhai (complainant) and this witness PW1 both are partners in the diamond factory. At the place of incident, the panch witness had not noted any signs of blood or any other noticeable thing. According to him, the police had not gathered any sample from the place of incident. If this witness is to be believed, then the place of incident is 'pan no gallo' i.e. pan shop while the prosecution case is 'Dhora'. Further he says that he had seen the incident, which means he would have been along with the complainant. The



testimony of this witness would support to observe that prosecution is hiding some facts which prosecution does want to come on record during trial.

19. PW2 – Ajaysinh Jadeja for the Panchnama Exh.15 at Exh.16 was declared hostile. He denied the suggestion that the police constable – Bharat Jethabhai Davda, Buckle no.129 had in his presence produced the clothes of the deceased Bhupat Lavji Vegad which included shirt pant, baniyan and nikar and one seal bottle containing blood sample of the deceased and cotton swab in the small seal pack bottle. The witness also denied of the arrest of the accused no.2- Hardevsinh Fatubha Gohil, resident of Gundivada in his presence
20. PW3 – Raghubha Vajubha Rathod denied the arrest panchnama of accused no.1 – Jaydevsinh @ Munno Fatubha Gohil of Gundivada and also have denied the Panchnama Exh.18 with regard to the production of clothes of accused no.1 as blue colour full sleeved shirt with pockets on both the sides and brown colour jeans pant.



21. PW4 – Mehboobbhai Hajibhai Sarvaiya turned hostile and had not supported the Panchnama Exh.15, which was produced in evidence of PW2. This witness as PW4 also denied the Panchnama Exh.20 with regard to the vehicle, which was used in the offence. The witness denied of the motorcycle with registration no. GJ-04 AM-8677 as produced by accused no.3 – Gohil Vanrajsinh Mahavirsinh @ Madhubha, resident of Gundivada and had also denied the seizure of Hero Honda GJ-04 VK-663 from accused no.2 – Gohil Shaktisinh Raghubha of Gundivada.
22. PW5 – Vijaysinh Gohil was examined for Panchnama Exh.18. He has not supported the prosecution. PW6 – Salimbhai Abdulbhai Sorathiya, panch witness who turned hostile had not supported Exh.20.
23. In light of panch witnesses not supporting the prosecution case and as per evidence of PW1, though was examined as panch, even being partner of complainant has not supported the prosecution case, who though told the police of having witnessed the incident, and police has not recorded his statement , in



this background, the evidence of complainant and other witnesses are required to be examined and analysed.

24. PW12 is the complainant – Kanjibhai Lavjibhai Vegad who states himself to be the eye-witness to his elder brother – Bhupatbhai's murder. The complainant resides with his family at Koliyak Village and is running a diamond factory. They are 3 brothers and 1 sister. The deceased Bhupatbhai was the eldest brother who earned his livelihood by plying vehicle named 'Magic'. The witness younger brother is Arvind who is unmarried, their mother died.

24.1 The incident, as per the complainant, had occurred on 7.4.2015. According to him, at 9.39 night, he received a phone call from his elder brother – Bhupatbhai who inquired from him about the place of his availability. To that he replied that he was at the factory. So Bhupatbhai asked him to come to him and the complainant when asked about the place, Bhupatbhai informed him to come at "Dhore". The complainant stated that he had also inquired from Bhupatbhai as to what had happened and



why he had called him. At that time, Bhupatbhai told the complainant that Hardevsinh (A2) was threatening him, who had asked him to stay where he was, and therefore, the complainant assured Bhupatbhai not to worry and that he would be reaching at that place.

24.2 The evidence of the complainant refers that he received a phone call at 9.35 night from the deceased brother who asked him to come at Dhora stating that accused – Hardevsinh was threatening him and had asked him to stay where he was. So accordingly the complainant assures him that he would reach there.

25. The further evidence of the complainant records that thereafter, on motorcycle within 2-3 minutes, he reached “Dhore”. The complainant stated that “Dhore” is in their Village, and he saw that his brother Bhupatbhai was standing there with his magic rickshaw. The complainant inquired from him as to what was the reason and why he was threatening him. So Bhupatbhai told him that earlier, he had borrowed Rs.3,000/- from Hardevsinh and inspite of the said amount being returned back, Hardevsinh had



threatened him and that he was coming to beat him. So the complainant told Bhupatbhai that he should not talk with Hardevsinh and whatever talk would be done with Hardevsinh would be by him.

26. So, here the evidence shows that the deceased here informs the complainant's brother of having earlier borrowed Rs.3,000/- from accused – Hardevsinh and since the accused has threatened him and was coming to beat him, so the complainant alerted his elder brother not to talk with the accused rather permit him to talk. This conduct of the complainant as well as his conversation on the phone with the brother would suggest that for the first time he came to know of the money borrowed by the deceased, he had come there to protect the elder brother and to talk on behalf of the brother assuring the brother that he would resist accused – Hardevsinh. Here it becomes relevant to note as submitted by learned advocate Mr. Zala for the accused that on the phone, the complainant was informed of the threat given by Hardevsinh. Even after coming to the



place which was in their own Village, the deceased repeated about the threat and also the fact that the accused Hardevsinh would be coming there to beat him. In spite of that, the complainant had not informed the police of the said threatening and the complainant on his own had gone to the place. He had not even alerted other persons of their village.

27. The further evidence recorded of the complainant notes that after 10 minutes, Hardevsinh Fatubha (A2), Mahendrasinh Raghubha (A6), Jaydevsinh Fatubha (A1) and Shaktisinh Raghubha (A5), the four came there on two motorcycles. Here the evidence is of four persons coming at the place of incident on two motorcycles.
28. After the accused came there, the complainant asked Hardevsinh (A2) as to why he was threatening his brother and asked him to stop hurling abuses. To that, Hardevsinh told him not to be smart, asking that he was not required to question him. Therefore, in reply the complainant told Hardevsinh that Bhupatbhai was his elder brother and therefore, he can ask him. The



complainant also told Hardevsinh that the money which was lent by him was already paid, at that time, Hardevsinh replied that he had to recover Rs.7,000/- as interest and the transaction had taken place with Bhupatbhai and the accused asked the complainant not to be over smart as the money was to be recovered from the deceased. Saying so, the complainant stated that Hardevsinh abused and caught complainant's collar. At that time, Mahendrasinh Raghubha (A6) was standing besides the complainant and besides deceased Bhupatbhai, Jaydevsinh Fatubha (A1) and Shaktisinh Raghubha (A5) were standing and both of them were having verbal altercation with Bhupatbhai. The complainant stated, that Hardevsinh (A2) and Mahendrasinh (A6) were having verbal dispute with him, at that time, a third motorcycle came with Vanrajsinh Madhubha (A3) and Shanubha Manubha(A4).

29. The evidence of the witness as a complainant, thus, suggests that he had verbal altercation with Hardevsinh who asked him not to interfere in the matter of payment



of Rs.7,000/- as the transaction was with his elder brother – Bhupatbhai. According to the complainant, Hardevsinh caught him at his collar, at that time, Mahendrasinh Raghubha (A6) was simply standing there. The complainant has not ascribed with any overt act or any utterance by A6. According to the complainant, A1 and A5 were near his brother Bhupatbhai, while he stated that A2 and A6 were disputing with him. The presence of A1, A2, A5 and A6 at the place of incident with the initial entry on two motorcycles has been shown by the Prosecution Witness. Till that time, the only act was A2 holding the complainant by his collar while abusing him and A1 and A5 i.e. Jaydevsinh Fatubha and Shaktisinh Raghubha having verbal quarrel with the deceased Bhupatbhai . Here there is no use of weapon to inflict blow.

30. After the third motorcycle came with A3 and A4, Vanrajsinh Manubha and Shanubha Madhubha, they both went near A1 and A5 and all the four i.e. A1, A5, A3 and A4 raised dispute with Bhupatbhai, at that time, the



complainant tried to move towards them, but Mahendrasinh Raghubha (A6) had held him. Now it is a case of the complainant that , Shaktisinh Raghubha (A5), Vanrajsinh Madhubha (A3), Chhanubha Manubha (A4), three of them had caught hold of Bhupatbhai and at that time, Jaydevsindh Fatubha (A1) removed a knife from his waist and gave a forceful blow with the knife on the chest of Bhupatbhai. The complainant at that time felt that these accused would even kill him and therefore, he relieved himself from the grip of Hardevsindh and Mahendrasinh A2 and A6 and ran towards his house. The complainant stated that after covering a little distance, he came back and saw that all the six had run away on the motorcycle towards Gundi village. His brother Bhupat was struggling on the ground, at that time, Shambhubhai and Vipulbhai of their village came there, Vipulbhai carried his brother to the nearby Government dispensary, which was in their village and within 2-5 minutes, the Doctor declared his brother as dead.

31. It is a case of single blow on the chest. The accused



faced the trial under Section 302 read with Section 149 of IPC. In that context it is to be noted that there is no principle as noted in the case of **Mahesh Balmiki v. State of M.P.. (2000) 1 SCC 319** that in all cases of single blow, Section 302 IPC is not attracted and question with regard to nature of offence has to be determined on the basis of facts and circumstances of each case. The nature of injury, vital and non-vital part of the body, the weapon used and the circumstances in which the injury was caused and the manner in which the injury was inflicted, are the relevant factors to determine the required intention or the knowledge of the offender. It was noted in Paragraph 9 as under:-

"9. Adverting to the contention of a single blow, it may be pointed out that there is no principle that in all cases of a single blow Section 302 IPC is not attracted. A single blow may, in some cases, entail conviction under Section 302 IPC, in some cases under Section 304 IPC and in some other cases under Section 326 IPC. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The nature of the injury, whether it is on the vital or non-vital part of the body, the weapon used, the



circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine the required intention or knowledge of the offender and the offence committed by him. In the instant case, the deceased was disabled from saving himself because he was held by the associates of the appellant who inflicted though a single yet a fatal blow of the description noted above. These facts clearly establish that the appellant had the intention to kill the deceased. In any event, he can safely be attributed the knowledge that the knife-blow given by him was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death."

32. From the evidence of the complainant, it was Jaydevsinh Fatubha (A1) who had given the knife blow on the chest of his deceased brother. Jaydevsinh as A1 is the person who had initially come with A2, A5 and A6. Prior to A3 and A4 reaching the place of incident, as per the complainant, there was verbal altercation by the accused with the complainant and the deceased brother Bhupatbhai. At that time, Jaydevsinh as per the prosecution case would have knife with him, but had not given any blow to any of them i.e. the complainant or the deceased. The conduct of the complainant becomes very



mysterious as he was the person who had come there to talk on behalf of his elder brother – Bhupatbhai. The complainant as brother was not knowing of the money borrowed by Bhupatbhai from Hardevsinh. It is not Hardevsinh (A2) who had given the knife blow. The knife blow is attributed to Jaydevsinh (A1). The complainant as per the conversation with his deceased brother had no fear to talk and dispute with the accused. Complainant actually had engaged into dialogues with Hardevsinh who had asked him not to interfere. In spite of that, complainant resisted Hardevsinh, but strangely, when Jaydevsinh gave a knife blow to his brother, the complainant ran away from that place.

33. It is not the case of the complainant that he had seen Shambhubhai(pw15) and Vipulbhai (PW14) there at the place of incident. The complainant is running towards his village and according to the complainant, Shambhubhai and Vipulbhai are the people from his village, but actually these two witnesses are from village Gundi. On complainant returning back at the place of incident, he



saw accused escaping on the motorcycle towards village Gundi. Till that time, the complainant is not referring about the presence of Shambhubhai and Vipulbhai at the place of incident. Surprisingly, it is not the complainant who is taking his brother to the Government dispensary.

34. The cause of the dispute as stated by the complainant is the amount of Rs.3,000/- borrowed by his brother from Hardevsinh and inspite of the amount being returned back, Hardevsinh was demanding Rs.7,000/- and for that reason, the incident had occurred. It also becomes hard to believe that deceased had borrowed an amount from Hardevsinh when the complainant brother is holding a diamond factory. The family of both the brothers were residing adjoining PW16 Arvind the younger brother was residing with the complainant. The deceased brother could have borrowed money from complainant as brother. The complaint was given at Vertej Police Station as per complainant. The complaint was placed in evidence at Exh.48. The knife complainant identified in the Court as being held by Jaydevsinh (A1). All the



accused came to be convicted under Section 302 of IPC by invocation of Section 149 of IPC. Section 149 reads as under:-

“149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.— If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.”

35. The section has essentials that (i) there must be an unlawful assembly, (ii) commission of an offence by any member of an unlawful assembly, (iii) such offence must have been committed in prosecution of the common object of the assembly or must be such as the members of the assembly knew to be likely to be committed. The prosecution is required to establish whether the accused persons were present and whether they shared a common object. The relevant question to be examined by the Court is whether the accused was a member of an



unlawful assembly or not, whether he actually took part in the crime or not. The section requires the assembly of five or more persons to be designated as unlawful assembly, with the common object as consist of one or more of the five illegal objects specified in Section 141 of IPC. The pivotal question of applicability of Section 149 of IPC has its foundation on constructive liability, which is the *sine qua non* for its obligation. It contains essentially two ingredients

- (i) Offence committed by any member of any unlawful assembly consisting five or more members and;
- (ii) Such offence must be committed in prosecution of the common object (Section 141 IPC) of the assembly or members of that assembly knew to be likely to be committed in prosecution of the common object.

36. The case of ***Chanda v. State of U.P., (2004) 5 SCC 141***, would be relevant to be referred, to understand the applicability of Section 149 IPC, wherein it was held as under:-



"8. The pivotal question is applicability of Section 149 IPC. The said provision has its foundation on constructive liability which is the sine qua non for its operation. The emphasis is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. The word "object" means the purpose or design and, in order to make it "common", it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be



formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression "in prosecution of common object" as appearing in Section 149 has to be strictly construed as equivalent to "in order to attain the common object". It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to a certain point beyond which they may differ in their objects and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149 IPC may be different on different members of the same assembly.

9. "Common object" is different from a "common intention" as it does not require a prior concert and a common meeting of minds before the attack. It is enough if



each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The “common object” of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 141, an assembly which was not unlawful when it was assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words, it can develop during the course of incident at the spot eo instante.



10. Section 149 IPC consists of two parts. The first part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was a member. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 141, if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of the section. The purpose for which the members of the assembly set out or desired to achieve is the object. If the object desired by all the members is the same, the knowledge that that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be achieved and that is now the common object of the assembly. An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be available and, like intention, has generally to be gathered from the act which the person commits and the result therefrom. Though no hard-and-fast rule can be laid down under the circumstances from which the common object can be culled out, it may reasonably be collected from the nature of the assembly, arms it carries and



behaviour at or before or after the scene of occurrence. The word “knew” used in the second limb of the section implies something more than a possibility and it cannot be made to bear the sense of “might have been known”. Positive knowledge is necessary. When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part but not within the first part. The distinction between the two parts of Section 149 cannot be ignored or obliterated. In every case it would be an issue to be determined, whether the offence committed falls within the first part or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part. However, there may be cases which would be within the first part; but offences committed in prosecution of the common object would be generally, if not always, be within the second part, namely, offences which the parties knew to be likely to be committed in the prosecution of the common object. (See *Chikkarange Gowda v. State of Mysore* [AIR 1956 SC 731 : 1956 Cri LJ 1365] .)



11. The other plea that definite roles have not been ascribed to the accused and therefore Section 149 is not applicable, is untenable. A four-Judge Bench of this Court in *Masalti v. State of U.P.* [AIR 1965 SC 202 : (1965) 1 Cri LJ 226] observed as follows : (AIR p. 210, para 15)

"15. Then it is urged that the evidence given by the witnesses conforms to the same uniform pattern and since no specific part is assigned to all the assailants, that evidence should not have been accepted. This criticism again is not well founded. Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault. In the present case, for instance, several weapons were carried by different members of the unlawful assembly, but it appears that the guns were used and that was enough to kill 5 persons. In such a case, it would be unreasonable to contend that because the other weapons carried by the members of the unlawful assembly were not used, the story in regard to the said weapons itself should be rejected. Appreciation of evidence in such a complex

case is no doubt a difficult task; but criminal courts have to do their best in dealing with such cases and it is their duty to sift the evidence carefully and decide which part of it is true and which is not.”

12. To similar effect is the observation in *Lalji v. State of U.P.* [(1989) 1 SCC 437 : 1989 SCC (Cri) 211] wherein it was observed that : (SCC p. 441, para 8)

“Common object of the unlawful assembly can be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before scene of occurrence. It is an inference to be deduced from the facts and circumstances of each case.”

13. In *State of U.P. v. Dan Singh* [(1997) 3 SCC 747 : 1997 SCC (Cri) 469] it was observed that it is not necessary for the prosecution to prove which of the members of the unlawful assembly did which or what act. Reference was made to *Lalji case* [(1989) 1 SCC 437 : 1989 SCC (Cri) 211] where it was observed that : (SCC p. 442, para 9)

“While overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten vicariously criminal liability under



Section 149.”

It is not really necessary to determine as to which of the accused persons forming part of the unlawful assembly inflicted what particular or specific injury in the course of the occurrence. That the number of actually convicted persons is less than five or that the case projected certain one or more named persons as having inflicted the injury but the same could not vis-à-vis that person actually be proved to have been committed or that such person came to be acquitted for some reason or the other peculiar to him does not in any manner prejudice the case of the prosecution or the liability of others who formed the unlawful assembly to be convicted for having carried out the object by merely being the members of the unlawful assembly, as long as the participation of others in furtherance of the common object of the unlawful assembly remained sufficiently substantiated.

37. The evidence of the complainant in the cross-examination would become necessary to be appreciated to examine whether the accused had formed the unlawful assembly and they with a common object had come at the place as suggested by the complainant as well the deceased. The evidence in the examination-in-chief does



not bring all the accused coming together, at the place alleged to be the place of offence. Initially four of them came there, then, there would not be invocation of Section 149 IPC. Another aspect is that knife is shown in the hands of accused no.1 while object attributed is with accused no.2. Except A1, none have weapons with them. The evidence as get unfolded by the other witnesses do not identify the muddamal weapon. The eye-witnesses are not sure of the weapon shown in the court during trial. As recorded in the cross-examination, the complainant stated that he was residing near Dhora of Koliyak Village and his residence was known as Shaktinagar. From the place of incident, the distant to the Government dispensary was 100 to 150 mtrs. He affirmed that the place where the incident had occurred was recognized as 'Dhora' of Koliyak Village. The complainant witness while giving the topography of the place has stated that according to him, the place of incident was on the left hand and the dispensary was on the right hand of Bhavnagar Koliyak road. Clarifying the direction, the witness stated that if they enter Village



Koliyak from Bhavnagar, from the place of incident, his house is towards the left hand side. The road towards his house is known as Kuda road and on the end of the road, the last village is Kuda. While walking 10 ft. from the place of incident towards the road, he stated that there was a curve and from there it is a straight road till 50 mtrs. He affirmed that prior to entering the straight road, there is a corner known as 'Maran Kotadi no Vank' and after about 10 mtrs., the second corner is also recognized as 'Maran Kotadi no Vank' and on walking the distance of 10-20 mtrs., the third corner is known as 'Amara Ghar Vada Khancha'. Entering that corner, there are four houses and thereafter, leaving three plots, it would be his house. He affirmed that from his house, the place of incident could not be seen nor any noise could be heard and his house is at Shaktinagar Kuda Road, Koliyak. He denied the suggestion that he was at his home at the time of the incident. The evidence also clarifies that Village Koliyak and Village Kuda are two different places while there is no description of Village Gundi here by the complainant.



38. The defence has tried to bring on record the distance between the house of the complainant from 'Dhora'. The house of the complainant is located after passing the third curve.
39. Since the prosecution has relied upon the CDRs and the fact that the deceased had prior to the incident called the complainant on his mobile phone. It has been stated in the cross-examination that at the time of the incident, the complainant's mobile number was 9924109785. The complainant had shown the police the call which he received from his brother at 9.39 hrs. Deceased brother had two mobile numbers 9909193609 and 8153874489. The witness could not state whether his brother was using his old no. 9909193609. The witness denied the suggestion that his brother had not called him from the mobile number recorded in the complaint.
40. The further cross-examination records that Vipulbhai Arjanbhai Solanki – PW14 was resident of Gundi Village and was doing miscellaneous work in a mobile shop at



Koliyak Village. So the evidence of complainant that Vipulbhai and Shambhubhai of his village had come, goes contrary to the actual place of residence of PW14 and PW15. The complainant witness further stated that PW14 took his brother to the Government dispensary at Koliyak and after 1 or 2 minutes, he reached at the dispensary. The witness stated that it was Vipulbhai who had got the case registered. If this evidence is to be considered and believed then it cannot be said that complainant was with the deceased rather it appears that deceased was with Vipulbhai.(pw14).When complainant reached the dispensary, Bhupatbhai was under treatment. He denied the suggestion that the Doctor was inquiring from Bhupatbhai as to why and how he sustained injuries. The witness voluntarily stated that the Doctor had inquired from them and he had told the Doctor that Bhuptbhai got injured by a knife. The complainant affirmed that he has not given the names of the assailants to the Doctor. The complainant does not remember whether Vipulbhai had given the names of the assailants to the Doctor. When he reached the dispensary, Vipulbhai and Shambhubhai both



were present there. The witness denied the suggestion that prior to informing the police about the name of the persons who had assaulted with the knife, he had not named the assailants before any other person.

41. Appreciation of evidence is best based on the ocular evidence. The court relies on the ocular evidence of the witness which should inspire confidence of the court and should be reliable and trustworthy. A single trustworthy witness would also be sufficient to believe the prosecution.

42. In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, circumstances either elicited from those witnesses themselves or established by other evidence tending to



improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or put forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.

43. The witness examined in the present matter to count them from the panchas, to the witnesses as stated to be eye-witnesses are all inter-related. The prosecution has not examined any person who could be considered as independent and would not have any relation, direct or indirect to the complainant and the deceased. The evaluation of evidence of those related witness requires special scrutiny more so when the faction of village has been shown to be in enmity and too political in nature.



The complainant is the real brother of the deceased who is coming up with the case that A2 was demanding money from the deceased which A2 was not entitled to. The common object to bring all the accused under Section 149 IPC was the money asked for by A2. Under Section 149 IPC the prosecution has to prove that all the accused shared the common object. In other words, the object should be common to all the accused who compose the assembly. They should be aware of the common object and reason to concur to it. Thus, that is the reason the expression 'common object' gets prominence in the section. The offence must be connected immediately with the common object of the unlawful assembly.

44. Reverting back to the evidence recorded to the prosecution case, according to the evidence of the complainant-brother the deceased had called him to 'Dhora' which is the place of offence as stated by the complainant, where the deceased met him with his 'Magic rickshaw' which the deceased was plying to earn



his livelihood. Though magic rickshaw was at the place of incident the complainant has not given any evidence regarding its use after the incident.

45. The evidence was that all the accused ran on their motorcycles towards Gundi Village and the complainant himself had escaped fleeing himself from the clutches of Hardevsinh (A-2) and Mahendrasingh (A-6)
46. Place of incidence was shown to panch witness PW – 1 Maganbhai Surabhai, which was the pan parlour at the village Kuda Road, Panch stated that at the eastern side was the road towards Koliyak. Panch witness had not seen any bloodstains or any noticeable signs at the place of incident, neither the police had collected any sample from the place. Panch-witness was not declared hostile. The place of incident is the Pan Parlour, Panch witness has not described the place as 'Dhora' while the complainant in the cross-examination, has very emphatically affirmed that the place of incident at Koliyak village is known as 'Dhora'. Complainant is residing near the 'Dhora' at Koliyak Village known as 'Shaktinagar



Dhora'. If the place of incident is beside his house, then there was no reason for the complainant to run away from the place. The road towards his house is known as Kuda Road. While the complainant clarified that the place of incident cannot be seen from his house nor the noise could be heard.

47. The local F.S.L. officer PW – 10 Parvinbanu Ansari had visited the place of incident on 08.04.2015, at 03:30 p.m. at Koliyak Village where the officer met the Investigating Officer, Mr.Y.D. Jaganiya who showed the F.S.L. officer, the exact place of incident.
48. F.S.L. Officer stated that the place of incident was at a distance of 24 Feet from the 'Fine Parlour' towards the Southern direction of the road. The place was road from Gundi Village to Koliyak, and tar road meeting village Kuda, thus was a three cross lane. On the southern side of the three cross road was 'Ramdev Pan Parlour' and on the northern side was the shop with a board of 'Fine Parlour'. The F.S.L. Officer had not found any blood stains or blood splattered there nor had seen any



noticeable signs at that place. F.S.L. Officer has also deposed about the instructions she had given to the I.O. for the necessary mudammal to be collected for the investigation, which included the postmortem, the F.S.L. Report of the clothes and boot/chapal of the deceased, the mobile print out of the accused and the deceased. The report was placed in evidence at Exh.41.

49. So the evidence of PW – 1 panch witness and the local F.S.L. Officer P.W. - 10 did not find blood at the place of incident, no noticeable signs were seen nor sample of the soil from the place of the incident was collected. Panch witness and PW – 10 do not describe the place as 'Dhora'.

50. In the cross-examination, the F.S.L. Officer clearly denied of the examination at Gundi Village and stated that it was a place between Gundi Village and Koliyak Village. Further clarifying that from the place of incident, the Primary Health Centre was at a distance of 50 feet. It was a public road having shops on both the sides.



51. F.S.L. Officer also affirmed that in her presence, no vehicle was seized. The FSL Officer also stated that no reference has been made in the report whether there was any arrangement of lights in the surrounding areas.
52. The place of incident does match with the evidence of PW – 1 Panch, F.S.L., Officer PW – 10, to that of place 'Dhora' stated by complainant PW – 12. For the panch, the place is the Pan Parlour while F.S.L. Officer states 24 feet distance from the Pan Parlour on Southern Side of the Road as shown by the Investigating Officer while complainant says the area is 'Dhora' in their village Koliyak. The distance of Primary Health Centre from the place as per the complainant was 100 to 150 meters. The complainant deposed in cross-examination that from the place of incident, after walking 10 to 12 Feet on the road there is a curve. The complainant in his evidence has given description of three curves to reach his house.
53. The complainant PW-12 has stated that the deceased brother had phoned him at 09:39 night on 07.04.2015 he reached within 2 to 3 minutes at 'Dhora' at his village:



Koliyak.

54. PW -11 - Doctor Kasyap Chandrawadan as Medical Officer of C.H.C. Koliyak testified that at 09:50 night, Bhupatbhai Vegad was brought for treatment on 07.04.2015 without police yadi by Vipulbhai Arjanbhai Solanki of Village: Gundi, who gave the history before the doctor that ten minutes prior, a Darbar of Gundi has given a knife blow at the place where, Kuda and Koliyak Road meet.
55. So Vipulbhai Solanki (PW – 14) told the doctor of a knife blow by one Darbar. The place of incident is not 'Dhora' in village Koliyak. PW14 is not giving the total number of Darbars nor is giving the names of the Darbar. Before doctor he gave history of one Darbar.
56. The Doctor deposed that the patient was unconscious, he had no heart beats and was not breathing. The oxygen level was zero. The pupil of eyes were not responding. The general condition of the patient was very bad.
57. The doctor noted approximately 3 cm x 0.5 cm oblique



cut on the middle of left side chest on 1/3rd upper part towards the left side, with blood and clotted blood. Patient took two sudden gasp and at 09:55 night was declared dead. The witness doctor who gave the preliminary treatment, informed the police.

58. According to the doctor, the injury could be caused by hard and sharp substance. The Doctor was shown the muddamal knife, who opined that the injury to the patient was possible with that knife. The case paper under the signature of the Doctor was put in evidence at Exh.45. The injury certificate was placed at Exh.46.
59. The doctor stated that since he had not done the internal examination, he could not say that the injury was sufficient to cause the death of a person.
60. So the doctor who had preliminary examined the patient, could not opine about the cause of death. In the cross-examination of the doctor, it had been re-affirmed that it was Vipulbhai Arjanbhai Solanki (PW - 14) who had brought the patient to him, and the doctor has further



affirmed, that Vipulbhai Solanki was alone, to bring the patient. Doctor stated that he had asked Vipulbhai about the history in relation to the incident. Doctor clarified that whatever history Vipulbhai gave him, he had written in the case papers and the certificate.

61. Thereafter, in the cross-examination in question and answer form the evidence was recorded, where the defence posed a question whether the doctor had made efforts to know the name of the 'Darbar of Gundi' who as stated by Vipulbhai had given knife blow. The Doctor replied that he had asked the name but Vipulbhai did not inform him. Further, the doctor deposed that even the description of the assailant was not given by Vipulbhai. The Doctor affirmed that had Vipulbhai given the description of the assailant, he would certainly had written in the case papers and certificate.

62. The doctor PW – 11 stated that the injury of the patient was in bleeding condition. The doctor affirmed the suggestion that if the margin and edges of both the sides are clean cut, they would not record it, but, if the margin



and edges of any side of the injury are rigid or contused, then it would have been clearly noted whether it was incised wound or stab wound.

63. The Doctor thus stated about the muddamal knife, that it was one side sharp edged while other side was blunt and affirmed that if the injury is caused by that muddamal knife, then one side of the injury would be clean cut and the other side rigid. The doctor was again shown the muddamal knife in the cross-examination who replied that he cannot definitely say whether the injury suffered by the patient was with that knife.
64. The doctor said that since he had seen the direction, margin, depth and breadth of the injury and so he could say that the injury suffered by the patient could be caused by double sided knife. There was all possibilities of injury caused by 'Gupti'. The doctor also affirmed that in C.H.C. Koliyak, there is facility of Post Mortem room.
65. The Doctor stated that he had informed the 'Vertej Police Station' and immediately Vertej Police Station persons

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67. Since the doctor PW11 had immediately informed the Vertaj Police Station, the relevance would be of Police Station record. PW – 17 – Kritsingh Balubha Vaghela was the PSO incharge at Vertaj Police Station on 08.04.2015, and at about 20 hours at night as per his testimony probational ASP Shri Jaganiya of Vertaj Police Station had sent the complaint for registration. The complaint was handed over to him by ASI Gohil. The witness PW – 17 stated that he registered First CR No.44/2015 under Section 302 and other sections of IPC at Vertaj Police Station and had initiated to send the report to the Court in accordance to Cr.P.C. Section 157. The witness further stated that since the case was of murder therefore, he had sent the message to the concerned superior officer and had handed over the investigation to ASP Jaganiya. The station diary entry No.2 of page 100 as a certified copy from the original station diary was produced in evidence at Exh.60. The yadi of handing over the investigation was placed in evidence at Exh.61, and report to the police Superintendant, Bhavnagar regarding



serious offence was placed in evidence at Exh.62.

68. The observations made in different cases with regard to delay in filing of FIR requires mention here to appreciate the present case. In *Amar Singh v. Balwinder Singh* [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] this Court held that: (SCC pp. 527-28, para 10)

“There is no hard-and-fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful. It necessarily depends upon facts and circumstances of each case whether there has been any such delay in lodging the FIR which may cast doubt about the veracity of the prosecution case and for this a host of circumstances like the condition of the first informant, the nature of injuries sustained, the number of victims, the efforts made to provide medical aid to them, the distance of the hospital and the police station, etc. have to be taken into consideration. There is no mathematical formula by which an inference may be drawn either way merely on account of delay in lodging of the FIR.”

68.1. In the case of *Sahebrao v. State of Maharashtra*, (2006)

9 SCC 794 it was held as under:-



6. The settled principle of law of this Court is that delay in filing FIR by itself cannot be a ground to doubt the prosecution case and discard it. The delay in lodging the FIR would put the court on its guard to search if any plausible explanation has been offered and if offered whether it is satisfactory.

7. At this juncture, we would like to quote the following passage from *State of H.P. v. Gian Chand* [(2001) 6 SCC 71 : 2001 SCC (Cri) 980] wherein this Court observed: (SCC p. 79, para 12)

"12. Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any [plausible] explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case."



69. In the case of **State of Andhra Pradesh vs. M. Madhusudhan** reported in (2008) 15 SCC 582, it was held that delay in lodging or filing an FIR under Section 154 CrPC, more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, but also gives rise to the danger of introduction of a coloured version, an exaggerated account of the incident, or a concocted story as a result of deliberations and consultations, thereby casting a serious doubt on its veracity. Thus it was held that the delay in lodging the report should be satisfactorily explained.

70. The evidence of the Doctor PW – 11 Kasyap Chandrawardan recorded that he had immediately informed Vertej Police Station after the injured was brought to the C.H.C. for that purpose the PSO PW – 17 was cross examined and according to his evidence, on 07.04.2015 at about 22:15 hours Doctor K.C. Dave of Kodyak Hospital had informed the police station about



the incident through his mobile phone number 8238015156. This PSO was shown the Station Diary Entry placed in evidence at Exh.63, which he recognised in his own handwriting and signature and affirmed that when the doctor had informed him there was no mention of the number of assailants nor there was any reference of any names or their caste. PSO affirmed that the information from the doctor with regard to the incident which had taken was received at 22:15 hours. The PSO was incharge from 20:00 hours on 07.04.2015.

71. Thus, according to the PSO on 07.04.2015 at 22:15 hours he had already received the information of the incident, there were no names of the assailants nor was there any reference of the numbers, or their caste, while the complaint which was forwarded by ASP Jaganiya was received by the PSO on 08.04.2015 at about 20:00 hours. So there was delay for almost about ten hours in sending the complaint for registration. The complaint was recorded by Mr. Jaganiya and the investigation was also conducted by him.



72. PSO in his cross examination affirmed that as soon as the information regarding the incident was received, it was conveyed to the ASP and police force was sent to the place.
73. The PSO was also asked about a complaint that was registered on 07.04.2015 as the station diary entry No.14 as First CR NO.45/2015 under Section 395, 436, 450 of IPC and Section 135 of the GP Act, while he firmly stated that it was against Bhupatbhai Bhuvabhai Thapa resident of Gundi and sixteen other persons and the complainant was Vanrajsinh Fatubha Gohil resident of Gundi Village Taluka and District Bhavnagar against. The PSO affirmed that the investigation of the said complaint was also entrusted to Mr. Jaganiya.
74. The PSO also affirmed that Station Diary Entry No.15 recorded on 08.04.2015 at Vertej Police Station as I CR No.46/2015 under Section 395, 436 of IPC and Section 135 of the GP Act was given by Harendrisinh Janubha Gohil against accused Jayantibhai Solanki and seventeen



other persons. The investigation was handed over to ASP Jaganiya. This fact of the registration of the complaint on 07.04.2015 and 08.04.2015 was affirmed by PSO by referring to the original Station Diary.

75. In the cross examination PSO stated that he could not state that at what place the complaint of Kanjibhai was recorded. He stated that the complaint was not given at his police station before him. He had not seen complainant Kanjibhai at Police Station during the night hours. PSO denied the suggestion that the complaint under Section 302 of IPC was recorded on the next day and by recording false date and false time, false complaint has been registered. He denied the suggestion that the complainant was influential and therefore, to assist him he was giving false testimony.

76. The evidence of PSO thus brings out the fact that on 07.04.2015, the information given by the doctor was recorded at 22:15 hours, and on the very same day that is 07.04.2015 the complaint under 395, 436, 450 as CR NO. 45/2015 was given by Vanrajsingh Fatubha Gohil of



Gundi Village, while the complaint which was converted into FIR of the present matter was registered on 08.04.2015 at about 20:00 hours i.e. the next day. Thus, the information which was given by the doctor was not converted into FIR. The accused side had filed complaints against prosecution witnesses and others of their side which culminated into Station Diary Entry Nos.14 and 15.

77. Doctor Chandrawadan PW – 11 stated that the Vipul Arjanbha Solanki PW – 14 had brought the injured to him Vipulbhai is the resident of Village Gundi. All the six accused are also the resident of Village Gundi. Vipulbhai had not named these accused before the doctor who all were from his own village. The history was that a Darbar of Gundi had inflicted knife blow, which had happened ten minutes prior to taking the injured before the doctor at C.H.C. Kodyak. The incident had occurred, as per the history of Vipulbhai before the doctor, was the place where the road of Kuda Village and Kodyak Village meet. The complainant PW -12 Kanjibhai Vegad the brother of the deceased, stated that he was eye witness to the



incident, however, he was not the person who had taken the deceased to the C.H.C which was there near to the place of the incident. Non-disclosure of the name of the assailants by Vipulbhai before doctor Chandrawadan makes the case doubtful, as though the doctor had specifically asked for the name of the assailant, Vipulbhai had not informed the doctor the names. Further the conduct of the complainant stating that since he got scared he fled away from the place of incident. That conduct also adds to the doubt, further the local FSL Officer PW – 10 had not found any blood stains or trace of blood or any noticeable thing at the place of the incident which was shown by the investigating officer, couple with the fact that the cases were registered on 07.05.2015 and 08.05.2015 against Bhupatbhai and 17 others and Jayantibhai and 17 other under Section 395 which states of dacoity and Section 436 which gives definition of Mischief by fire or explosive substance with intent to destroy house etc. Section 450 refers to house trespass in order to the commission of the offence punishable with imprisonment for life.



78. PW7 Jayantibhai Godhavari Solanki is the panch for inquest panchnama Exh.26, who was called on 08.04.2015 at Government Hospital before the PM. The Panch was related to the deceased as paternal cousin. The panch witness had given description about the clothes worn by the deceased. The witness stated that on the dead body the clothes were light blue colour shirt, light blue colour jeans pant and a sweater which was blood stained and there was cut of the weapon on the shirt and sweater. According to the witness there was injury near the nipple of the chest, the right hand of the body was full of blood, near the naval there was a dark spot which was not an injury. The witness also clarified that he had not seen any injury on any other part of the body. Witness stated there was a 'Om' tatoo on the right hand.

79. In the cross examination of this panch PW -17, it was recorded that panch was from Koli Community and at the time of the incident he was running a food grain shop which was on the Hydad Road, he is a resident of Gundi



Village. According to him the total population of Gundi Village is about 2 to 3 thousand people ,while Koliyak's population was of 4 to 5 thousand people. He stated that the people of Gundi Village go to Koliyak for their purchases.

80. The witness PW -17 stated that he had heard the name of Kishorbhai Samjibhai Vegad PW – 13. In the cross examination he has stated that the police had arrested him in some case and he remained in jail for 20 days. He affirmed that against him there was allegation of looting a shop and putting it on fire. In that case police had arrested about 17 to 18 persons and charge sheet was filed against them. The witness affirmed that they had doubts that Jaydevsinh alias Muno Fatubha had murdered Bhupatbhai Lavjibhai therefore they had looted and burned the shop of Jaydevsinh. So this witness becomes an interested person as was accused of looting and burning the shop of accused Jaydevsinh and witness stated that it was on suspicion of A1 murdering deceased then the loot and fire incident had taken place. In that



case the police had not seized mudammal from him. The witness affirmed that in the inquest panchnama after marking comma besides Section 302 the figure 147 had been overwritten by scribbling four and seven. However the witness stated that he could not read below figure four, figure one being written ,while below seven is figure four. Witness stated that he has not seen this overwriting. Witness was also referred to the panchnama Exh.26 and he affirmed that after writing Criminal Registration number leaving one finger space the number has been recorded and in whole of the panchnama it was at this place there was larger gap between two words. The evidence of this witness clarifies that he had no knowledge of the definite information nor had the specific information of murder by A1. The loot and fire at the shop was on suspicion harboured against A1.

81. The doctor who conducted the postmortem was examined as PW – 9. Dr.Vanraj Natubhai Parmar was a medical officer at Sir. T. Hospital District Bhavnagar. On 08.04.2015 he was having his duty at PM room and at



time ASP Shri V.D. Jagyaniya of Vertej Police Station has sent the body with Bharatbhai Jetabhai Davda Police Constable Buckle No.129. The dead body was of Bhupatbhai resident of Koliyak Taluka District Bhavnagar. The panel doctor was C.A. Desani. Postmortem started at 08:15 hours and was concluded at 09:45 hours. The dead body of 35 years male, on external examination found full sleeve shirt with a white lining which had the label of 'garage' and 'show of authentic' all the six buttons of the shirts were open and the tuck of the second and third button hole of the shirt were torn. The front of the pocket was empty.

82. The doctor had recorded that there was 3.5 cm cut on the front left side on the shirt which was travelling outside at the distance of 3.6 cm button hole line till 34 cm below the shoulder and further stated that 14.5 cm cut in L shape was behind the left side sleeve which was at a 20 cm distance from the lower end of the sleeves and L shape cut of six centimeter was on the right side sleeve on the upper and rear side which was 2.5 cm



below the arm pit. The whole shirt was blood stained and on the left and the lower part of the front area there was excessive blood.

83. The postmortem Doctor – PW9 has referred to the injuries sustained by the injured. The postmortem note at column no.17 describes the injuries as under:-

3cm x 0.6cm x chest cavity deep oval shape stab wound vertically oblique present on left anterior side of chest. Its upper medial end is 6 cm medial to left nipple and 4.5 cm left lateral to midline. Upper medial end is on horizontal nipple line. Both angles are acute. Margins are clean cut and blood stain tract of wound goes medially and backward with cutting skin, subcutaneous tissue 4th intercostal space, lower part of 4th Rib just near sternum bone (3.0 cm length), anterior margin of upper lobe of left lung (2.8 cm length), Pericardium (2cm length) then piercing anterior aspect of origin of Pulmonary trunk (1.5 cm length), Track of wound shows blood clots at places

(2) 13x12 cm size dark brownish colour hyper pigmentation patches present around the umbilicus (3) 5x3 cm size dark brownish colour hyper pigmentation patches present anterior aspect of upper



pust of Right thigh.

84. The Doctor in his deposition stated that except for injury no.1, there was no corresponding injury in the wall of the chest or ribs for the other injuries. The opinion of the Doctor for the cause of death was shock and hemorrhage due to stab injury over chest.

84.1 The Doctor stated that injury no.1 could be caused by sharp pointed weapon, while rest of the two injuries could not be caused by any weapon. The Doctor affirmed the Muddamal knife as cause for injury no.1 of column no.17.

84.2 The Doctor deposed that the Hyper Pigmentation of injury nos.2 and 3 of column no.17 was because of excessive bleeding.

84.3 The Doctor also affirmed that the internal injury of column no.20 was because of a single blow of a knife. The Doctor was of the opinion that the injury on the lungs, would not be the cause of death in all cases if the patient is treated within a reasonable time, and in that



case, the patient could be saved.

84.4 This Doctor was also shown the weapon Muddamal 'F' knife who affirmed that it was sharp at one side and blunt on the other side.

84.5 The blood sample of the deceased was taken minimum of 5 cc and maximum of 10 cc.

85. Medical evidence also confirms of a case of single blow, a oval shape stamp wound cavity clap vertically oblique on left lateral to middle.

86. Dr Kashyap – PW11 in the examination-in-chief affirmed the injury to be by the Muddamal knife, while in cross-examination, he stated that he could not definitely say that the injury could be by that weapon. Doctor Kashyap was of the opinion that the injury could be caused by a 'Gupti'. In the same way, PW9 – Dr Vanraj Parmar in examination-in-chief affirmed of injury no.1 by Muddamal weapon, however, in cross-examination, the Doctor affirmed that he definitely could not say that the injury was possible with the Muddamal knife. So the muddamal



weapon does not get confirmed by both the doctors. The evidence of doctor also refers to excessive bleeding.

87. The complainant – Kanjibhai Lavjibhai Vegad (PW12) had not given any evidence that when he was present at the place of incident, PW14 – Vipulbhai Banabhai Solanki as well as Shambhubhai Bholabhai Vegad – PW15 had come there. It is not the evidence of the complainant that he had seen PW14 and PW15 rushing towards the place of incident. As per the complainant, the place of incident was 'Dhora'. While PW14 – Vipul Solanki has not described the place of incident as 'Dhora'.

88. PW14 in his evidence has stated that he was residing with his family at Village Gundi. On the day of the incident at about 9 to 9.30 night, he and Shambhubhai had gone to the 'Fine Pan Parlour' on the Kuda road to eat Pan Masala. About 40-50 ft. from Pan Mava shop, they saw Darbars of Gundi Village disputing with the complainant – Kanjibhai and deceased – Bhupat Lavjibhai Vegad. The Darbars were Hardevsinh Fatubha, Jaydevsinh Fatubha, Shaktisinh Raghubha, Mahendrasinh



Raghubha, Chhanubha Manubha, Vanrajsinh Madhubha. PW14 stated that from far, they were watching the dispute and saw that Kanjibhai was held by Mahendrasinh (A6), while Shanubha (A4) and Shaktisinh (A5) had held deceased – Bhupatbhai. According to witness PW14, at that time, Jaydevsinh (A1) removed a knife and gave a blow on the chest of the deceased – Bhupatbhai. The witness stated that he had seen the knife. Because of the knife blow, Bhupatbhai fell down and therefore, he went there. At that time, Darbars ran away. Thereafter, he picked up Bhupatbhai and took him to the Government Hospital. The Doctor on examination had declared him dead. Thereafter, this witness took Bhupatbhai in Ambulance to Bhavnagar and stated that in Ambulance, Arvindbhai the younger brother of the deceased – Bhupatbhai was along with him and other 4-5 persons of Bhavnagar were in the Ambulance. The witness stated that there was no police personnel in the Ambulance. The questionable evidence is from where the younger brother of deceased and other persons of Bhavnagar had come there.



89. The fact which becomes noticeable that this witness had come to 'fine pan parlour' at 9-9.30 p.m. According to the complainant Kanjibhai, he received a phone call at 9.39 from his deceased brother Bhupatbhai and thereafter, he came at the place of incident. If that had happened so, this witness PW14 – Vipulbhai would have certainly seen the complainant – PW12 coming at the place of the incident and would have also seen the deceased Bhupatbhai standing there with his magic rickshaw. None of these facts had been deposed by PW14. As per complainant Kanjibhai, after reaching the place of incident, he had talked with his brother Bhupatbhai and 10 minutes later, 4 of them had come on 2 motorcycles, while PW14 does not depose any such incident. PW14 does not even state that Kanjibhai PW12 had run away from the place fearing his life. It is also not Kanjibhai who had taken the deceased to the Government hospital for treatment. The complainant is nowhere present at the Government dispensary nor in the Ambulance when the dead body was taken for



postmortem. Who were the 4-5 persons joined in the Ambulance had not been named by PW14. The younger brother of Bhupatbhai i.e. Arvindbhai (PW16) had accompanied Vijaybhai (PW14) in the Ambulance.

90. According to PW14, the cause for the incident was of deceased having borrowed Rs.3,000/- from Hardevsinh (A2) and inspite of returning back, A2 was demanding money.
91. The witness identified the accused as all Darbars in the Court. The witness was also shown the Muddamal knife, however, he stated that he could not definitely say whether the blow was given with that knife. So PW14 has not identified the muddamal weapon.
92. It becomes very strange to note that inspite of the complainant as a brother had come to the place of incident, he states that he ran away from the place to protect himself and PW14, resident of Village Gundi, was at Fine Pan Parlour with Shambhubhai (PW15) who too was resident of Village Gundi.



93. In this case the brother who had come there to confront the accused prefers to run away. The presence of PW14 and PW15 at 'Fine Pan Parlour' raises doubt since both these witnesses are resident of Village Gundi. Vipulbhai (PW14) had carried the deceased Bhupatbhai to the Government hospital CHC Koliyak, as per the evidence of Dr Kashyap (PW11), Vipulbhai had not named the accused before the doctor. In spite of doctor asking him the names of the accused, he had not informed the names of the assailants. PPW14 and PW15 gave evidence that they had come to 'Fine Pan Parlour' to eat mawa-masala from Village Gundi to Village Koliyak.
94. In the cross-examination of PW14, it comes on record that PW14 was diamond cutter and was working in the factory of Laxmanbhai Baraiya at Hathab Village. Earlier he was in the factory of Kanjibhai - the complainant, where he worked for about 4-5 years. The witness stated that since the deceased Bhupatbhai was brother of Kanjibhai and therefore, he was knowing him. The witness stated that Bhupatbhai was plying magic vehicle



and witness was knowing Bhupatbhai since last 4-5 years.

95. The routine of his work was 8 in the morning to 6 in the evening. The witness stated that since Shambhubhai (PW15) was working with him so he knows him. According to the witness, he and Shambhubhai (PW15) had never together worked as diamond cutter at Lavjibhai diamond factory.. He was knowing Shambhubhai since 7-8 years. The witness had no knowledge whether Shambhubhai was earlier polishing diamond at complainant – Lavjibhai's factory.

96. The witness stated that he and Shambhubhai (PW15) would meet 2-3 times in a week, however, the place and the date would not be fixed. It had not so happened that they had decided to meet on the day of the incident. So then how both were present together at that place without each others knowledge remains to be explained. How by chance both got together has to be clarified to consider their presence there as natural.



97. The witness affirmed that 'Fine Pan Parlour' belong to a person of Muslim community and the shop was there since many years. Often he would go there to eat Pan Mava. He does not know when Shambhubhai would go there at 'Fine Pan Parlour'. The witness affirmed that on the date of the incident for the first time, they had gone together at 'Fine Pan Parlour'. On the day when they had gone there, 'Fine Pan Parlour' was closed. So there was no occasion to eat Mava. The witness also stated that on that day, they had not eaten Pan Mava at any other place.
98. They had come together at Fine Pan Parlour, which was actually closed. In spite of the pan parlour being closed, they waited there for no reason.
99. Here in the present case, Vipulbhai (PW14) and Shambhubhai (PW15) stated that they had come at Fine Pan Parlour. The pan shop was closed. Both the witnesses are not from the same Village Koliyak. They are the resident of Village Gundi where all the accused persons reside. The deceased and the complainant are



from Village Koliyak. Vipulbhai and Shambhubhai have tried to make consistent their statement as the prosecution relies on these witnesses to prove the fact that both the friends often would come at Fine Pan Shop to eat pan masala. Here they have been shown as eye-witness to the incident, it could not be proved by way of evidence that they would everyday meet and come there at the pan shop as daily routine ,to be considered as chance witness to the incident. The evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere 'chance witnesses'. The testimony of such witnesses has to be scrutinized with due care. The evidence of chance witness requires a caution and close scrutiny. The chance witness must adequately prove his presence at the place of occurrence, as has been held in the case of **Jarnail Singh v. State of Punjab, (2009) 9 SCC 719**, wherein it was also noted that the conduct of the chance witness is also required to be considered subsequent to the incident particularly, as to whether he has informed anyone else about the incident.



100. In the case of **Sekhu Yadav v. State of Bihar, 2005 Cri LJ 2259**, it has been noted that in absence of any corroboration of reasons for being present at the place of occurrence, the evidence of chance witnesses who are not resident of village of occurrence cannot be relied upon as their presence at the place of occurrence is absolutely doubtful.
101. In the case of **Guli Chand v. State of Rajasthan, AIR 1974 SC 276**, it has been observed that though a chance witness is not necessarily a false witness, it is proverbially rash to rely on such witness.
102. The reason for the witness to be present at the place of occurrence has to be proved to be believable since chance witness is a person who appears at the scene of occurrence for chance and the presence of whom may not be natural in the context of occurrence.
103. In the cross-examination, Vijaybhai PW14 stated that he had carried deceased Bhupatbhai in the hospital all alone. The distance from the place of incident to the



hospital was 100 to 150 steps. The witness also stated that he had seen serious injuries on the chest of Bhupatbhai, but there was nominal bleeding while the evidence of doctor was that there was excessive bleeding. The witness denied that at the place of incident, the blood had splattered down on the ground. He had carried Bhupatbhai with his two hands, inspite of that, his clothes were not blood stained nor there was any blood on his hand. None had assisted him while he carried the deceased to the hospital.

104. At the hospital, PW14 stated that he had gone to Dr. Dave and along with him, there were 2-3 persons whom he was not knowing and was also not knowing about their village and had no knowledge about them. This aspect of the evidence also creates doubt since Investigating officer Shri Jaganiya has also in his evidence affirmed the presence of two persons, for whom there was no investigation. PW14 too had deliberately tried to hide the names of those persons. This is very strange as the witness PW14 could not clarify about



those 2-3 persons who were there at the dispensary. The doctor had inquired as to who had brought Bhupatbhai at that time PW14 told the doctor that it was he who had brought Bhupatbhai. While Investigating Officer was doubtful about the person who actually brought deceased to the CHC centre. Before Dr Dave PW14 made conscious efforts not to name the person who inflicted knife blow to the deceased.

105. According to PW14 when the doctor had asked him, he had given his name as Vipulbhai Banabhai or Vipul Arjanbhai. He does not definitely remember so. The doctor has taken his signature. PW14 affirmed that the doctor had inquired from him as to how Bhupatbhai got injured. The witness stated that he had told the doctor whatever he was knowing about the incident.

106. PW14 affirmed that he had informed the doctor only about Bhupatbhai sustaining the injury with the knife. The witness denied the suggestion that he had not given the names of the assailants to the doctor while voluntarily stated that he had given name of one person.



The witness also stated that he had not informed the doctor the name of the place of incident but had given the caste of the person who had given knife blow. The witness PW14 also affirmed that he had not informed the doctor as to who had held Bhupatbhai during the incident.

107. PW14 denied that he had only informed the doctor that a Darbar of Gundi Village had given knife blow to Bhupatbhai. The witness also denied the suggestion that till the time, the doctor asked about the name of the assaulter, he was not knowing the name. The witness stated that he had stayed there for about 2 hours at the dispensary. PW14 only said that it was one Darbar. But failed to name the Darbar though doctor had asked him the name.

108. It is also the evidence of PW14 that in Koliyak Village there is out police chowky of Police Station and when he had taken Bhupatbhai to the dispensary, Bhupatbhai was alive and after 10-15 minutes, he died. At the time of his death, there was no relative present. The witness stated



that the postmortem was not conducted at Bhavnagar at Sir T Hospital and till the time of the postmortem, he was present there. There is no explanation coming forth as to why the postmortem was not conducted at CHC Center, Village Koliyak though Dr. Kashyap Chandravadan, PW11 the Medical Officer of CHC has stated in the evidence about the facility of postmortem room available at Koliyak CHC.

109. The evidence was also given by this witness PW14 that the police had not accompanied him in the Ambulance, though after an hour of taking Bhupatbhai to the dispensary, police had come there. He had not informed the police about the incident at the dispensary. He denied that the police had not inquired about the incident from anyone else, except him. According to him, the police was inquiring from Kanjibhai (complainant) at the dispensary. However, the witness does not know as to what the police had asked Kanjibhai and what Kanjibhai had informed the police. In the cross-examination, the witness stated that while he was taking dead body of



Bhupatbhai in Ambulance at Bhavnagar, at that time, he was with the brother of the deceased Arvindbhai and 2 other persons whom he was not knowing and stated that they would be the relatives of Bhupatbhai from Bhavnagar. The presence of these two persons as well the presence of younger brother Arvindbhai becomes a suspicion circumstances. The dispensary was very near to the alleged place of incident where PW14 could even carry the deceased single handedly.

110. According to the witness PW14, the police jeep was following the Ambulance at Sir T hospital, inquest Panchnama of the dead body was drawn. At that time too, during the inquest Panchnama PW14 had not given names of the assaulters to the police. He had not informed the police that he was eye-witness to the incident when the inquest Panchnama was drawn. The funeral ceremony was at the evening of the next day and at that time, police was present there. PW14 clarified that according to him, during all the time, police was present. The police had met him at the place during the



funeral. There police had inquired about him by his name saying who was Vipul, so the witness identified himself and went near the police. According to the witness, at that time too, the police had not inquired from him about the incident, nor he had given the names of the assailants to the police at the funeral place. He had not informed the police that he was the eye-witness to the incident. Thereafter, from the cremation ground, he reached home and then, he went to Vertej Police Station. So according to the sequence as stated in the testimony PW14 visited Police Station on 8.4.2015.

111. According to the witness, Shambhubhai was with him at the cremation place and even at Sir T Hospital till the completion of the postmortem. The police had inquired from PW14 about Shambhubhai and asked him as to who was Shambhubhai. The witness affirmed that Shambhubhai too had not given the names of the assailants to the police at the funeral place and Shambhubhai had not informed in his presence about knowing the incident. From the evidence of PW14 it



transpires that he is projecting himself to be closely related with PW15 as friend and further they are from the same village. The evidence of closely related persons require a cautious analysis.

112. In the case of **Bhaskarrao v. State of Maharashtra, (2018) 6 SCC 591**, it was held as under:-

32. Coming back to the appreciation of the evidence at hand, at the outset, our attention is drawn to the fact that the witnesses were interrelated, and this Court should be cautious in accepting their statements. It would be beneficial to recapitulate the law concerning the appreciation of evidence of related witness. In *Dalip Singh v. State of Punjab* [*Dalip Singh v. State of Punjab*, (1953) 2 SCC 36 : 1954 SCR 145 : AIR 1953 SC 364 : 1953 Cri LJ 1465] , Vivian Bose, J. for the Bench observed the law as under: (AIR p. 366, para 26)

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an

innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

33. In *Masalti v. State of U.P.* [*Masalti v. State of U.P.*, (1964) 8 SCR 133 : AIR 1965 SC 202 : (1965) 1 Cri LJ 226] , a five-Judge Bench of this Court has categorically observed as under: (AIR pp. 209-210, para 14)

"14. ... *There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not the evidence strikes the court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into*



account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

(emphasis supplied)

34. In *Darya Singh v. State of Punjab* [*Darya Singh v. State of Punjab*, (1964) 3 SCR 397 : AIR 1965 SC 328 : (1965) 1 Cri LJ 350] , this Court held that evidence of an eyewitness who is a near relative of the victim, should be closely scrutinised but no corroboration is necessary for acceptance of his evidence. In *Harbans Kaur v. State of Haryana* [*Harbans Kaur v. State of Haryana*, (2005) 9 SCC 195 : 2005 SCC (Cri) 1213 : 2005 Cri LJ 2199] , this Court observed that: (SCC p. 227, para 6)

"6. There is no proposition in law that



relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused.”

35. The last case we need to concern ourselves is *Namdeo v. State of Maharashtra* [*Namdeo v. State of Maharashtra*, (2007) 14 SCC 150 : (2009) 1 SCC (Cri) 773] , wherein this Court after observing previous precedents has summarised the law in the following manner: : (SCC p. 164, para 38)

“38. ... it is clear that a close relative cannot be characterised as an “interested” witness. He is a “natural” witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the “sole” testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.”

113. The conduct of both the witnesses PW14 – Vijaybhai and PW15 – Shambhubhai becomes very suspicion and



doubtful. In spite of police being constantly with them, none of the witness had given the names of the assailant to the police, rather the police was inquiring about them by their names. The complainant – Lavjibhai is totally absent in the deposition of this witness – PW14. The only evidence, which PW14 could give about the complainant – Kanjibhai was that he had seen accused no.6 – Mahendrasinh having held Kanjibhai. What thereafter was done by Kanjibhai at the place of incident has not been deposed by the witness. PW14 had also not given any narration of the facts about the complainant coming at 'Dhora' and while they were standing near 'Fine Pan Parlour', even of having seen all the accused coming on the motorcycle at the place of the incident. In the Ambulance, this complainant as a brother of the deceased had not accompanied them and there is no clarification how another brother of the deceased – Arvindbhai with 2 other persons of Bhavnagar had joined him in the Ambulance carrying death body at Bhavnagar. Though the doctor at Koliyak CHC wanted the names of the assailants, PW14 had not given the names. The



police had also come at CHC and had followed the Ambulance at Sir T hospital at Bhavnagar and on the next day too, the police was at the funeral place inspite of the presence of the police all throughout, PW14 had not named the present convict – accused as the assailants. The only vague statement before the doctor at CHC Koliyak was of one Darbar giving one knife blow to Bhupatbhai.

114. According to the evidence of PW14, he along with Shambhubhai had gone to Vertej Police Station. The witness affirmed that after returning home from the cremation ground, there was fire at the house of Darbar Vanrajsinh Fatubha of Gundi Village and for that purpose, the police of Vertej Police Station was inquiring about him and Shambhubhai – PW15. He denied the suggestion that the police of Vertej Police Station had inquired from him and Shambhubhai in connection with the fire that took place at the shop of Harendrasinh Chhatubha of Gundi Village. This evidence, couple with the evidence of PSO – Kiritsinh Vaghela (PW17) who had deposed about



registration of the complaint under Sections 395 and 436 of the IPC on 7.4.2015 and on 8.4.2015 would clarify the fact that prior to the registration of the complaint of the present matter, the house of Vanrajsinh Fatubha was burnt and the complaint was given against accused – Bhupat Rubha Thapa, resident of Gundi and 16 others and for putting the shop of Harendrasinh Chhatubha on fire, the complaint was given against Jayantibhai Bodhabhai Solanki and 17 others. It appears that thereafter, PW14 and PW15 had gone to the Police Station. The complaint Exh.48 given by the complainant – Kanjibhai Vegad (PW12) dated 7.4.2015 does not bear the time of recording the complaint nor the place at which the complaint was given to the Investigating Officer, and as per the evidence of PSO – Kiritbhai Vaghela – PW17, the complaint came for registration on 8.4.2015 at about 20:00 hrs. night. There is no explanation for such a long delay in sending the complaint for registration. The evidence on record also suggests that PW14 and PW15 had gone to Vertej Police Station only after attending the funeral ceremony, which



was on 8.4.2015 in the evening. Till that period, there is no evidence that Kanjibhai Vegad – PW12 had met the police – Shri Jaganiya – PW18. As per the Investigating Officer – Shri Jaganiya, after sending the dead body at Bhavnagar Government Hospital, the complainant – Kanji Vegad at that time had given the complaint before him which was recorded as stated by the complainant and thereafter, signature was received of the complainant. The Investigating Officer identified Exh.48. According to the Investigating Officer, after receiving the complaint, he had informed the PSO for the registration and also to report to the superior officer with regard to serious offence. The complaint, recorded on 7.4.2015 as stated by the Investigating Officer – Shri Jaganiya was received only on 8.4.2015 at 8 O’Clock night by PSO PW17. The Investigating Officer’s deposition, in the examination-in-chief, does not find corroboration and consistency in correlation to the evidence of the complainant himself. As recorded in the cross-examination with regard to written complaint PW12 – Kantibhai Vegad, the complainant said that, he had given his complaint at Vertej Police Station.



The complainant does not state of his complaint taken by the Investigating Officer at the place of the incident or at the CHC Center, Koliyak.

115. If the deposition of the Investigating Officer – Yashpal Jaganiya is considered he was serving as Probationer ASP in the year 2015 at Vertej Police Station and on 7.4.2015, at about 22:15 hrs., he received a Vardhi with the information that Bhupatbhai Lavjibhai Vegad of Koliyak Village has been admitted in Koliyak Government Dispensary since he got injured during the quarrel and has died. The Investigating Officer thereafter immediately started for Village Koliyak, where he found large number of people gathered of 'Kal Hamara Sangathan' of Koli community and therefore, considering the law and order situation, the dead body was sent to Bhavnagar Government Hospital and thereafter, the complainant – Kanji Lavji Vegad in his presence gave the complaint. After recording the complaint, he had sent it for registration to the PSO and instructed to inform the superior officer regarding the offence. As per the



evidence of the Investigating Officer – PW18 – Shri Jaganiya, he received the Vardhi at 22.15 hrs on 7-4-2015. The PSO – PW17 – Kiritbhai Vaghela had stated that at 22.15 hrs. on that day of 7.4.2015, he received the information from Dr. Shri K.C. Dave from Koliyak Hospital. When the PSO is not stating of registering the complaint on the information from Koliyak Hospital. Though the Investigating Officer – PW18 – Shri Jaganiya reaches the Koliyan Hospital immediately the complaint as stated to be recorded was not sent for immediate registration while the PSO states of receiving the complaint from Investigating Officer – Shri Jaganiya the next day i.e. 8.4.2015 at 20.00 hrs., the time gap between taking the complaint and sending it for registration at Vertej Police Station becomes very crucial and itself creates doubt. The Investigating Officer – Shri Jaganiya has to explain this delay, more so, when a complaint was registered as I-CR no.45/2015 by station diary entry no.14 on 7.4.2015 under Sections 395 and 436 of IPC.



116. The presence of 'Kal Hamara Sangathan' with large number of people of 'Koli Samaj' also becomes a questionable aspect, putting the investigation under the cloud of pressure.

117. The witness – Shambhubhai Bholabhai Vegad (PW15) is the person who according to the witness – Vipulbhai Solanki (PW14) was together at 'Fine Pan Parlour'. Shambhubhai (PW15) stated that on the day of the incident, he as well as PW14 both of them were going towards 'Fine Pan Shop' near 'Dhora' to eat Pan Mava. When they reached there, they saw dispute going on between deceased Bhupatbhai, Kanjibhai and six Darbars. The witness is not referring to the exact time when they reached the Pan Shop. According to the evidence, Kanjibhai was having dispute with Hardevsinh and Mahendrasinh, while with deceased Bhupatbhai, Vanrajsinh, Shaktisinh, Chhatubha and Jaydevsinh were quarrelling. At that time, Hardevsinh and Mahendrasinh had held Kanjibhai (complainant) and Vanrajsinh, Shaktisinh and Chhanubha had caught hold of



Bhupatbhai (deceased), at that time, Jaydevsinh gave a knife blow on the chest of Bhupatbhai. The witness stated that this incident he saw from a distance and he had seen the knife from that distance in the hands of Jaydevsinh and since Bhupatbhai got injured with the knife, they went near him, at that time, all the Darbars fled away on 3 motorcycles and because of this incident, Kanjibhai (complainant) was running away on the road towards Kuda Village and when they reached there, Kanjibhai (complainant) came back at the place.

118. So this witness brings the presence of Kanjibhai at the place, but this fact does not get a perfect corroboration from the evidence of Kanjibhai who could not say that it was at the time when PW14 and PW15 had reached the place, when he had returned back.

119. PW15 – Shambhubhai states that Vipulbhai – PW14 took injured towards the dispensary and , he and Kanjibhai - complainant followed him. This evidence is not corroborated by PW14, nor even by the complainant himself.



120. According to the evidence of PW15, when they were at the dispensary and when Doctor had declared Bhupatbhai dead, after about half an hour, police persons had reached there and thereafter, Bhupatbhai's dead body was sent to Bhavnagar Government Hospital for the postmortem. This witness PW15 has testified that Kanjibhai – complainant was along with him at the dispensary. He also states that within half an hour, the police had come there and the dead body was sent to Bhavnagar Government Hospital, but the witness does not state that at that relevant time, the Investigating Officer – Shri Jaganiya had recorded the complaint of the complainant – PW12. The witness rather stated that from Koliyak dispensary, he had gone to Vertej Police Station and when he was standing there out at Vertej Police Station, the police had taken the complaint of Kanjibhai and his statement was recorded on the next day. So according to PW15, the complaint was given at Vertej Police Station on 7.4.2015, but that fact is not corroborated by PSO – Kiritsinh Vaghela, PW17 who in



his deposition clarifies that he had not taken the complaint in his presence, nor had seen the complainant during the night time at the Police Station, and that it has not happened that the complainant has given the complaint in his presence. The PSO rather could not state as to where the complaint of Kanjibhai was recorded.

121. Shambhubhai – PW15 could not identify the weapon knife which was in the hands of Jaydevsinh in the Court. He also could not state whether with the said knife, Jaydevsinh had given the blow to Bhupatbhai. The inter-se connection of the witnesses have been brought on record by way of cross-examination and as stated by PW15 at the time of the incident, he was working as a diamond cutter at Bhavnagar at the factory of Shaileshbhai Dhanjibhai. Earlier he was polishing diamond at the factory of Kanjibhai (complainant) whose factory was at Maruti Nandan. The witness PW15 is resident of Gundi Village while stated that the incident had occurred in Koliyak Village. He also affirmed that there was Pan Mava Shop at Gundi Village. The witness



also affirmed that when the police had come at Koliyak dispensary, he had not informed the police about the incident nor had told the police that he had seen the incident nor had told the police that he knows the names of the assailants.

122. According to the witness – PW15 after about one and half hour of the incident, he had gone to Vertej Police Station where Kanjibhai was giving the complaint and he was sitting out on the Otta of the Police Station. At that time too, he had not informed the police anything about the incident, nor had informed the officer who was recording the complaint. If that is the case then the FIR was not registered at that time when PSO could not corroborate the same who rather stated that it was registered on 8.4.2015.

123. According to the witness PW15, the last rites of Bhupatbhai concluded at 3 in the afternoon the next day and thereafter, he had given his statement before the police, which was between 7 to 7.30 in the evening. At that time, he and witness PW14 were present there along



with the police persons.

124. The witness PW15 also stated that he too had gone to Koliyak dispensary when Bhupatbhai was taken there. He had not given the names of the aggressors to the Doctor who was examining Bhupatbhai nor had informed the police about the names of the persons. Surprisingly the witness has affirmed that from Koliyak dispensary to Vertej, they were with the police in the police vehicle. Even in the police vehicle, he had not informed the police about the incident.

125. From the accused side, the defence advocate while cross-examining PW15 has got the affirmation with regard to the complaint in relation to election on 26.7.2013, where according to the accused, this witness PW15 had filed the complaint. Though the witness PW15 has affirmed about filing of the complaint, he stated that he has no knowledge that complaint was against Madarsinh Manubha Gohil, Chhanubha Manubha Ghil, Bhupendrasinh Sujansinh and Mahendrasinh Surbha. According to the witness, he and one Dineshbhai



Rameshbhai and a third person Tulsibhai all had gone together and therefore, he could not recollect as to who had given the complaint and the witness does not remember that in that complaint, the complainant Kanjibhai was the witness and his mobile number at that time was 9601784389. The witness PW15 was shown the copy of the chapter case no.336 of 2013 before Bhavangar Taluka Mamlatdar Office, wherein he had signed as an applicant with his mobile number and the opponents were Madarsinh Manubha Gohil, Chhanubha Manubha, Bhupendrasinh Sujansinh and Mahendrasinh Surubha and in that case, he affirmed that the witness was Kanjibhai Lavjibhai Vegad (present complainant) and at that time, the mobile number of the witness – Kanjibhai was cited as 99240109785. PW15 expressed his ignorance stating that he had not given the mobile number.

126. The witness PW15 was also confronted about the chapter case no.336/2013 at Bhavnagar Taluka Mamlatdar Office. The witness affirmed that the opponent shown in chapter



case no.335/2013 were the same in chapter case no.335/2013. The witness affirmed that both the applications were given because of the grudge in connection with the elections and at that time, the candidate contesting the election was Narsibhai Arjanbhai who was the brother of his friend Vipul Arjan PW14. The witness also affirmed that Vipulbhai Arjanbhai is also known as Vipulbhai Banabhai with his surname as Solanki. He affirmed that Vipulbhai Banabhai's brother lost in the election against Madarsinh and the son of Madarsinh is the accused in the present matter Vanrajsinh and the brother of Madarsinh is also the accused Chhanubha and apart from them, others were Gohil Darbars of Gundi Village. The witness does not know whether all Gohil Darbars were the relatives of Vanrajsinh (A3). A suggestion was raised that because of the enmity in connection with the election, he (PW15) and Vipulbhai (PW14) and Kanjibhai (PW12) have given a complaint to falsely implicate all the accused. The witness also stated that he is a witness to the complaint given by Kanjibhai, while does not remember whether



Kanjibhai is a witness in the complaints given by him.

127. This witness PW15 affirmed that he was an accused in the case of fire at the shop of Harendrasinh Chhanubhai Gohil, where from the shop, currencies were looted. Even Vipulbhai is an accused in the said matter. The witness affirmed that on 11.7.2015, 12 accused were arrested by the police and he along with Vipulbhai and Vitthalbhai were arrested and sent to jail.

128. The evidence, thus, becomes clear that there was enmity because of the election. Further, PW14 and PW15 were made accused in the complaint for burning the shop of Harendrasinh Chhanubhai Gohil. The witness has also affirmed about the pelting of stones on the house of Vanrajsinh and other Darbars and at that time, the police had not made any inquiry from him nor had they informed the police with regard to the said incident. This witness was also asked about the presence of few of the accused at Mataji no Madh at Gundi Village and one of the accused playing volleyball in the backyard of



Virbhadrasingh. For that purpose, the defence has examined DW1 – Rameshbhai Dilavarbhai – Bhuva of Koliyak Village and Sanjaysingh Dhruvsingh Gohil – DW2 in connection with the presence of accused – Shaktisingh in the volleyball game.

129. The witness PW13 – Kishorbhai Shamjibhai and witness – Arvinbhai Lavjibhai PW16, the younger brother of the deceased were examined to corroborate the fact that Bhupatbhai had informed them about Rs.3,000/- borrowed from Hardevsingh and according to them since Hardevsingh was demanding Rs.7,000/- as a recovery, so the incident had taken place. PW13 – Kishorbhai and PW16 both were offering their prayers at Meldi Mata Mandir and according to the witness, the complainant had phoned PW16 – Arvinbhai, the younger brother informing that Jaydevsingh had given blow to Bhupatbhai and therefore, he had died. Both the witnesses had stated, about reaching the hospital on the motorcycle and the fact that the complainant had informed them about the incident. Kanjibhai - the complainant had given



names of six Darbars to them. The evidence also suggests that PW13 is the cousin of PW16 who also stated that the deceased Bhupatbhai is his paternal uncle's son. They both were confronted in the cross-examination of whether they had advised deceased Bhupatbhai to ask for police protection or to make a complaint with regard to the threat with respect to demand of Rs.7,000/-.

130. Further evidence of the police persons would be necessary to understand the full facts along with evidence. The Investigating Officer – Shri Jaganiya – PW18 in his evidence-in-chief stated that the inquest Panchnama Exh.24 was drawn on 8.4.2015 and thereafter, he had gone to Village Gundi for the Panchnama of the place of incident, where Exh.13 was drawn and the local FSL was present at that time. Thereafter, on 8.4.2015, as accused Jaydevsinh @ Munno Fatubha Gohil (A1) appeared before the Police Station the arrest Panchnama Exh.18 was drawn. Thereafter, the blood samples and clothes of the



deceased Bhupat Lavji were seized while drawing the Panchnama Ex.15 which was produced by the Police Constable–Bharatbhai Jethabhai.

131. The Investigating Officer – Shri Jaganiya further stated that the since the accused had volunteered to show the weapon, the preliminary Panchnama was drawn and along with the accused, they visited the place where the weapon was hidden and the knife was seized from the place and Panchnama Exh.28 was drawn. According to the Investigating Officer, on 9.4.2015, another accused Hardevsinh Fatubha Gohil (A2) appeared at the Police Station and his arrest Panchnama was drawn at Exh.16. The postmortem form was produced in evidence at Exh.65 and the Yadi sent for drawing the map of the place of incident by Circle Inspector, Mamlatdar was produced in evidence at Exh.66. The report Exh.67 was the dispatch document to FSL Junagadh for analysis. The witness stated that since his training concluded on 28.6.2015, further investigation was handed over to PSI – Shri R.L. Dave – PW19. Though yadi was sent for



drawing the sketch of the place of incident, no such map was produced on record. The police has also not said as to what the accused said before showing the willingness to produce weapons.

132. In the cross-examination of the Investigating Officer – Shri Jaganiya, the defence could bring on record the evidence of the first phone vardhi, then the Investigating Officer visiting the place of incident which according to him was at the distance of 25 km., from Vertej Police Station and he reached within 15-20 minutes, at Koliyak dispensary, which Investigating Officer stated was at a distance of 250 ft. from the place of incident and when he started towards the place of incident, he had called for other police persons to reach the place of incident. According to him, the other police persons were Dy.S.P. Shri Shaikh and ASI, PI and others and in all, there were 10-12 police staff and officers who reached there within 5 minutes.

133. In the cross-examination, the witness as Investigating Officer affirmed that the vardhi which they received at



Vertej Police Station did not include the names of the assailants. In the same way, neither their caste nor the strength of the assailants were stated. When he reached the dispensary, the injured had died. It had not come to his knowledge of any person named Vipul Solanki PW14 bringing the deceased to the dispensary and when he had inquired from the doctor, the doctor informed that two persons had brought the deceased there. The presence of these two mysterious person have not been clarified by any one. PW14 affirms two persons unknown to him joining at the dispensary. Police had not inquired from the dispensary about the person who had brought the deceased. Investigating Officer voluntarily stated that after 10-15 minutes, the brother of the deceased, Kanjibhai PW12 had come near him, who informed that he had brought the deceased there at the dispensary. So according to the I.O., complainant had brought the deceased to the dispensary. If that is so, then the whole story of Vipulbhai (PW14) carrying deceased to the CHC Koliyak gets wiped out, then in that circumstances, PW14 cannot be believed nor can PW15 be believed, who both



accidentally met at 'Fine Pan Parlour'.

134. The evidence thus of all the witnesses and more specifically the evidence of PW14 – Vipulbhai get falsified from the evidence of the Investigating Officer as according to Vipulbhai, he had carried the injured and had taken him to the dispensary, however, while carrying the deceased, his hands as well as his clothes had no blood stains, which would be practically impossible to believe as the deceased was bleeding and when the Investigating Officer had not affirmed of Vipulbhai Arjanbhai Solanki bringing the deceased at the dispensary, the prosecution case goes in shred of doubt, where all the witnesses are contradicting each other.

135. The Investigating Officer also affirmed that when Kanjibhai informed him about bringing his deceased brother at the dispensary, he as Investigating Officer had not taken the complaint nor had recorded his statement at that time. The Investigating Officer has not inquired from Kanjibhai as to who all had brought Kanjibhai at the dispensary. The Investigating Officer also affirmed that



when he had reached the dispensary, he had not seen blood on the clothes of the complainant or on any of the witnesses, nor had he seized the clothes of the complainant or the witnesses. He had also not recorded the statement of the Doctor who had given treatment at Koliyak dispensary. The Investigating Officer also does not recollect whether ASI of Koliyak was in the Ambulance along with the relatives of the deceased which was heading from Koliyak to Bhavnagar Government Hospital.

136. The Investigating Officer (PW18) also affirmed that the complainant had not come to Bhavnagar along with the dead body, while as per the inquest Panchnama, it was the complainant who had identified the dead body which was drawn at Sir T Hospital. The Investigating Officer stated that he has no knowledge as to where the complainant was at the time of inquest Panchnama. The Investigating Officer has also affirmed that no time has been recorded at the initial part recording the complaint nor while concluding it, nor the complaint discloses the



place, where it was recorded.

137. The Investigating Officer was also asked about the 'Kal Hamara Yuva Sangathan', which had reached at Koliyak dispensary, which the Investigating Officer affirmed that it was the union belonging to the community belonging to the deceased and also affirmed that the members of this union were along with the complainant and the witnesses, however the Investigating Officer denied the suggestion that the complaint in fact was given by 'Kal Hamara Hai Yuva Sangathan'. The witness also affirmed that it does not get disclosed in the complaint that the complainant had gone for eating Pan Mava and equally so it could not get disclosed in the complaint that Shambhubhai and Vipulbhai had gone at the pan shop to eat pan mava. So PW14 and PW15 meeting at 'Fine Pan Parlour' is not corroborated by the I.O. Thus, it would also become a ground for not believing PW14 and PW15.

138. The Investigating Officer further in the cross-examination stated that it got disclosed that the complainant had come along with his magic vehicle at the place, while also



affirmed that no magic vehicle was found at the place of incident and the Investigating Officer affirmed that at the place of incident, no blood stains were found and also affirmed that from the statement of the complainant, witness Shambhubhai and witness Vipulbhai, it did not get disclosed of any arrangement of light or brightness at the place. The Investigating Officer has also affirmed that he had not collected any evidence with regard to the deceased having borrowed Rs.3,000/- from the accused.

139. The Investigating Officer stated that he had called for the mobile phone call details of the deceased and the complainant, during the investigation, but denied the suggestion that there was overwriting and scoring in the mobile number noted in the complaint.

140. The Investigating Officer also affirmed that in the preliminary part of the discovery Panchnama, it has not been noted as to what was it that accused wanted to produce nor the place was recorded in the preliminary Panchnama. The witness affirmed that the place where the knife was found was a public area and has also



affirmed that he had not received any independent evidence to show that the accused had gone to the place or was returning back from the place where he had allegedly hidden the knife and further has also affirmed that in first part of the Panchnama, it has not been noted that they had carried the instruments to seal the muddamal.

141. The Investigating Officer affirmed that as per the complaint, there were two other persons with the accused near the deceased, but he could not get the clarification about their identity nor had asked for any clarification from the complainant regarding their identity. In the cross-examination, the witness as Investigating Officer was asked about the Vertej Police Station I-CR no.45/2015 and 46/2015 under Sections 395 and 436, which he affirmed and also affirmed that in the complaint given by Harendrasinh Chhanubha Gohil, the witness Vipulbhai Solanki and witness Shambhubhai Bholabhai Vegad were the accused. What was his investigation for the I-CR no.45/2015, 46/2015 and what



actually occurred when the investigation of all the matters were with him, could be stated by the I.O. In this background when the testimony of complainant about giving the complaint and the testimony of PW14 and PW15 about their presence at 'Fine Pan Parlour' could not be made cleared by the Investigating Officer , the prosecution case cannot be believed, of PW12, 14, 15 as eye-witnesses to the incident. Further I.O. could not verify and bring evidence of deceased having borrowed money from A2 Hardevsinh.

142. The prosecution had also examined Police Inspector – Shri Rameshchandra Laljibhai Dave who filed the charge-sheet in the matter as PW19. According to his testimony, on 2.7.2015, ASP Shri Jaganiya had handed over the investigation to him when he was Police Inspector at Vertej Police Station. According to PW19, 2 accused (i) Jaydevsinh @ Munno Fatubha, (ii) Hardevsinh Fatubha Gohil were in judicial custody and therefore, the charge-sheet was filed, while on 10.7.2015, the other 4 accused–Gohil Shaktisinh Raghubha, Gohil Mahendrasinh



Raghubha, Vanrajsinh Madarsinh, Chhanubha @ Chanubha Manubha appeared in the Police Station and the arrest was made through arrest panchnama. Accused had brought 2 motorcycles GJ-04 BK 663 and GJ-04 AM 8677, which were seized through Panchnama and thereafter, the blood samples of the accused were sent with the Yadi to the Medical Officer, Vertej. Exh.20 arrest panchnama was placed in evidence by the officer, who had also produced Exh.69, the Yadi of the muddamal received by the FSL officer and the forwarding letter of FSL, Junagadh Exh.70. The analysis report of FSL, Junagadh at Exh.71 and serological report of FSL, Junagadh at Exh.73. A report of Scientific Officer, FSL, Junagadh of Physical Science. The notification of Bhavnagar Collector at Exh.75, forwarding letter of Vertej PSI H.C. Gohil about call details at Exh.76, mobile call details at Exh.77 and another mobile call details at Exh.78.

143. In the cross-examination, PW19 the police stated that he was serving since last 25 years, in police department.



Prior to receiving the investigation, he had read all the papers and he could not find any evidence with regard to the quarrel in connection with the money transaction. The evidence of this officer as Investigating Officer , thus, crushes the main cause of the dispute as the officer could not find any evidence with regard to the allegation of accused no.2 demanding Rs.7,000/- from the deceased. The prosecution witnesses had raised the case on that very ground that the deceased had borrowed Rs.3,000/- from accused – Gohil Hardevsinh Fatubha and since he was making unreasonable demand of Rs.7,000/- and after threatening the deceased, all the accused in prosecution of the common object had formed an unlawful assembly to commit the offence.

144. The officer – Shri Dave as PW19 further stated that it did not get disclosed through the statements of the witnesses as to who had taken away the magic vehicle of the deceased from the place of incident. The evidence also comes on record that this officer Shri Dave affirms that when four accused appeared before him with the



motorcycle, they had earlier filed an application before the Collector, Bhavnagar, DSP, Bhavnagar and the earlier Investigating Officer, informing them that they were not present at the place of incident. The witness PW19 voluntarily stated that those applications were investigated by ASP, but denied the suggestion that when ASP was investigating those applications, he was along with him. Shri Dave – PW19 has no knowledge about any order or process on the application to the Collector, Bhavnagar, ASP and Vernej Police Station.

145. The police officer PW19 is also put to a question that whether prior to filing the charge-sheet, the Investigating Officer ought to have made investigation with regard to those applications and should have appraised himself, to that, PW19 stated that since the earlier officer had investigated, the later officer need not do any process. PW19 was also asked the question as to before filing the charge-sheet, the officer was required to verify the orders below the application, concerning the plea of *alibi*. To that, PW19 replied that once the investigation has



been concluded, it was not necessary to again examine them. However, the officer stated that he was having no knowledge as to what had happened about those *alibi* applications of four accused before the ASP and according to him, the officer filing the charge-sheet was not required to have the information about the orders on the *alibi* applications. However, affirmed that during the time of arrest of the accused, it would be required to investigate the statement of the accused. The officer affirmed that at the time of the arrest, the statements of the accused were recorded, and referring the statements, he stated that the accused at the time of incident were at some another place and further had affirmed that he had not gone to those places to verify about the presence of those four accused at those places referred by them. A plea of alibi had been raised for few of the accused from defence side.

146. In the case of **Kamal Prasad v. State of Chhattisgarh, (2023) 10 SCC 172**, it was observed by Hon'ble Supreme Court that, plea of alibi is required to be proved with



certainty so as to completely exclude the possibility of the presence of the accused at the spot of the crime. Thus, a standard of "strict scrutiny" is required when such a plea is taken. Further held, for the plea of alibi to be established, something other than a mere ocular statement ought to have been present, particularly when the prosecution relied on the statement of eyewitnesses to establish its case against the appellant convicts leading to the unrefuted conclusion that appellant convicts were present on the spot and indeed caused injuries on the victims/with lathis and tabbal on various and vital parts of their bodies. It was further noticed in the case of **Kamal Prasad (supra)** as under:

23. Another defence taken by the appellant convicts is that of the plea of *alibi*. This Court in *Binay Kumar Singh v. State of Bihar* [*Binay Kumar Singh v. State of Bihar*, (1997) 1 SCC 283 : 1997 SCC (Cri) 333] has noted the principle as : (SCC p. 293, para 23)

"23. The Latin word *alibi* means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the



occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime.”

24. The principles regarding the plea of *alibi*, as can be appreciated from the various decisions [*Dhananjoy Chatterjee v. State of W.B.*, (1994) 2 SCC 220 : 1994 SCC (Cri) 358; *Binay Kumar Singh v. State of Bihar*, (1997) 1 SCC 283 : 1997 SCC (Cri) 333; *Jitender Kumar v. State of Haryana*, (2012) 6 SCC 204 : (2012) 3 SCC (Cri) 67; *Vijay Pal v. State (NCT of Delhi)*, (2015) 4 SCC 749 : (2015) 2 SCC (Cri) 733; *Darshan Singh v. State of Punjab*, (2016) 3 SCC 37 : (2016) 1 SCC (Cri) 702; *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1 : (2017) 2 SCC (Cri) 673; *Pappu Tiwary v. State of Jharkhand*, (2022) 17 SCC 664 : 2022 SCC OnLine SC 109] of this Court, are:

24.1. It is not part of the General Exceptions under IPC and is instead a rule of evidence under Section 11 of the Evidence Act, 1872.

24.2. This plea being taken does not lessen the burden of the prosecution to prove that the accused was present at the scene of the crime and had participated therein.

24.3. Such plea is only to be considered subsequent to the prosecution having discharged, satisfactorily, its burden.



24.4. The burden to establish the plea is on the person taking such a plea. The same must be achieved by leading cogent and satisfactory evidence.

24.5. It is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the spot of the crime. In other words, a standard of "strict scrutiny" is required when such a plea is taken.

147. Like any other witnesses, the evidence of Defence Witness has to be tested on the touchstone of reliability, credibility and trustworthiness. In **State of Haryana v. Ramsingh, (2002) 2 SCC 426**, it was held by the Hon'ble Supreme Court that the defence witness was entitled to the equal treatment as that of the prosecution. In **Anupkumar Verma v. State of Jharkhand, 2004 CrLJ 1712**, it was noted that the testimony of a witness cannot be discarded merely because the witness figures as defence witness and was a near real relative of the accused, as deposition of the witnesses whether they are examined as prosecution witnesses or on defence side or as court witnesses, all of them have to be treated



equally.

148. Thus, the evidence of defence witness should be given the same weightage as is given to the prosecution witnesses if their evidence are found clear and trustworthy

149. From the side of the accused as referred earlier witness examined to prove their alibi, was DW1 – Rameshbhai Dilawarbhai who was a Bhuva and according to him, during Chaitra and Bhadarvo, two Gujarati months, the rites have to be performed for the ancestors and that rites contains reciting of "Path" (Pitru Suktam) and for that purpose, the family members of the deceased presence and Pachni (lemon) becomes necessary.

150. According to him, in the year 2015, during the month of Chaitra, the rituals were going on in Gundi Village and was also on 7.4.2015. On that day, the rituals were to be performed at Chamunda Mataji's Math from the side of Gohil Samaj, which was besides ' Gohil Samajvadi' and on that day, the whole family of Sujansinh Rupsinh Gohil



and Madarsinh Manubha Gohil had gathered there. On that day, the witness reached at about 7 to 7.15 in the evening to perform the rituals at Chamunda Mata Math. At that time, there were Sanjansinh Rupsinh Gohil, Bhupendrasinh Sanjansinh, Madarsinh Manubha Gohil, Vanrajsinh Madhubha (A3), Chhanubha Manubha Gohil (A4) and over and above them the witness named, another 5 persons in his testimony and have stated that there were about 10-12 persons present there. The rituals started at about 7.30 to 7.45, evening which concluded at 11 to 11.15 night and during that period, all the persons which he named in the testimony were present there. The witness came to know about some dispute between 11 to 11.15 near the dispensary at Dhor. The witness was cross-examined by the Public Prosecutor wherein stated that he was Bhuva of Mahakali Mata. He has also stated about his work in the cross-examination. He denied the suggestion that Vanrajsinh Chhanubha (A3) was also doing the work of Bhuva. He in the Chaitra month had performed 10 to 15 such rituals. The witness has also named the persons of Koliyak



Village for whom he had done the ceremonies. He denied the suggestion that he and Madarsinh's father were together in transport business, still, stated that 15 years prior, he was Deputy Sarpanch of Koliyak Village and contested the election from congress party. He affirmed that Madarsinh was elected as a Sarpanch of Gundi Village. The distance between the place where rituals were performed and that of dispute was 1 km. and he stated that ceremony remained incomplete.

151. Sanjaysinh Dhruvsinh Gohil as DW2 is by profession an agriculturist of Gundi Village and over and above that, he has hobby of sports. He has interest in volleyball and cricket. Cricket is played on the ground which was on the road besides Hoidad village. The witness stated that they would generally play volleyball in the backyard of Virbhadrasingh's house of the village from evening 6-6.30 till night 11 O'Clock, they would generally play volleyball and he named Jaypalsinh Dhruvsinh, Virbhadrasingh Narubha, Shaktisingh Raghubha(A5), Jayrajsinh Temubha, Chetansinh Vikramsinh, Harpalsinh Ranubha, Vijayrajsinh



Ranubha, Digvijaysinh Rajendrasinh and Yuvrajsinh Surubha.

152. The witness stated that all the persons referred by him were playing volleyball in the backyard of Virbhadrasinh's house from evening 6.30 to 11 at night and none had gone out during that period. The witness identified Shaktisinh Raghubha (A5) in the Court and stated that while they were playing, they heard of quarrel near the Government Hospital, which was at a distance of half or 3 quarters kms. In the cross-examination by the Public Prosecutor, he stated that the place where they were playing volleyball was at a distance of 200 mtrs. from his house and affirmed that in Gundi Village, there are descendants of two Darbar brothers. The witness has no knowledge as to what had happened of the quarrel. He affirmed that the names which he has stated in the examination-in-chief were all family brothers and affirmed that the fact, which he has stated in the examination-in-chief was never uttered by him earlier, nor anyone had asked him.



153. The testimony of both the defence witnesses appears to be normal, it does not appear that they were examined to falsely support the accused. The concerned accused had also written to the Collector ASP explaining their presence somewhere else at the time of incident. The application about their plea of alibi did not find logical end. It appears that the I.O. had not tried to investigate from that angle, rather it appears that both the I.O. had no interest in doing so.

154. The prosecution case further is that prior to the incident, the deceased had called the complainant through his phone no.8153874489 on the mobile no.9924109785 of complainant.

154.1 To corroborate the same prosecution examined PW20 – Pranav Mahendrakumar, the nodal officer of Bharatiya Airtel Ltd. who was called for giving the evidence in connection with the mobile no. 9662337181. The call details was produced at Exh.78 and he stated that the details were on the basis of phone location. Section 65B



of the Indian Evidence Act, 1872 certificate was also produced in evidence along with the printout of the CDR at Exhs.81 and 82. The sim card owner as per the witness was Harisinh Fatubha Gohil of Village Gundi, District Bhavnagar. One of the accused in the present matter is named as Hardevsinh, the full name of accused no.2 is Hardevsinh Fatubha Gohil. Learned advocate Mr. Zala for the accused has raised the argument that the prosecution was required to prove that the said mobile number was being used by the accused while disputing the ownership.

154.2 PW21 – Gauravbhai Anilbhai, Nodal Officer of Idea Cellular Ltd. was examined to give evidence with regard to mobile no.8153874489 and 9924109785. Section 65B certificate under the Indian Evidence Act, 1872 was produced at Exh.86. The witness stated that the owner of the sim card no.8153874489 was deceased Bhupendrabhai Lavjibhai Vegad and the owner of sim card no. 9924109785 was Kanjibhai Lavjibhai Vegad. He had produced the form and the additional evidence



regarding the identity with the call details at Exhs.84 and 85. The witness in the cross-examination affirmed that the forms were not filled in his presence nor the documents were produced before him. He has no knowledge about the tower number and the area and also affirmed that he could not say whether sim card owner would have made the calls.

154.3 The learned APP Mr. Dabhi had relied upon the CDR information of mobile no. 9924109785 and mobile no. 8153874489 on 7.4.2015 at 21.39.18 hrs. to state that the phone call with the duration and the location with area code would fortify the fact that prior to the incident, the deceased Bhupatbhai had called the complainant – Kanjibhai.

155. The witness PW20 had produced the CDR of Harisinh Fatubha Gohil (A2) at Exh.81. The defence has disputed the name since the name of the accused no.2 is Hardevsinh.



155.1 Exh.77-the CDR was produced by the Investigating Officer-Rameshchandra Laljibhai Dave, which was about mobile no.813874489 in the name of deceased Bhupat Lavji Vegad, Koliyak Bhavanagar. The CDR is from April 6, 2015 to April 9, 2015 with the last call to no.54300 and the time shown was 8:14:26 and the place and the address was open plot survey no. 190 near Ramapir Mandir, Nr. Limba Bachuni Wadi, Koliyak District Bhavnagar. The last 4 calls of April 8, 2015 records the level code as missing. The mobile is with the sim card of IMEI 359709053077320.

156. The evidence of the complainant – brother – Kanjibhai Lavjibhai Vegad (PW12) was that he received a phone call on 7.4.2015 at about 9.39 night. The prosecution has placed the CDR to substantiate this call on April 7, 2015 and the call at 21:39:19 addressed to Kanjibhai Vegad (complainant) on the mobile no.9924109785, where SDR address of Kanjibhai was shown at Shaktinagar Kuda Road, Opp. Government Hospital, Koliyak-3, District Bhavnagar, Gujarat-364070. The duration of call was 36



seconds. If the CDR is to be considered, then immediately, on that day thereafter, a phone had gone to mobile no.9924894116 at 21:56:59 minutes which lasted for 15 seconds and again, the another call was also on the same number of 9924894116 at 22:27:05, the duration of the call was for 35 seconds. The party who received the call was recorded as Bhupat Lavji Vegad i.e. the deceased and the address was Koliyak, Bhavnagar. Now, therefore, it becomes questionable for the call relied upon from 8153874489 to 9924109785, where the prosecution stated that it was call by the deceased Bhupat Lavji Vegad to Kanji Vegad – the complainant, then, the prosecution was required to prove as to who had called from the same no. 8153874489 on 9924894116, which was again in the name of the deceased Bhupat Lavji Vegad. Thus, both the mobile nos. 8153874489 and 9924894116 were running in the name of Bhupat Lavji Vegad – the deceased. Hence, it cannot be said that the prosecution has conclusively proved that the call on April 7, 2015 at 21:39:19 hrs. for 36 seconds was made by Bhupat Lavji to Kanji Vegad. Interestingly,



thereafter too, on that night of April 7, 2015 from the mobile no. 8153874489, there were many calls made on that night, over and above the 3 calls referred, there were another about 6 calls made. Further on April 8, 2015, 14 calls were made to different people. Then on April 8, 2015, at 11:13:35 hrs. was a call from this number to IG-612345 shown as missing and the place was Aakar Complex, Jail Road, Bhavnagar. The prosecution, thus, would have to explain about all these calls, which were made from the mobile phone of the deceased Bhupat Lavji Vegad. Even at about 22:48:00, there was a call from 8153874489 to 9924894116, both belonging to Bhupat Lavji Vegad, which was for about 24seconds. Thus, it cannot be said that prosecution had proved that the said mobile number 8153874489 was used by the deceased-Bhupat Lavji Vegad to call his brother on mobile no.9924109785.

157. In the CDR of mobile no.9662337181 in the name of Hareshsinh Fatubhai Gohil of Gundi, Taluka Bhavnagar, the phone call from this number on 8153874489 was



shown to be Bhupat Lavji Vegad at 21:46:58. The duration is shown as "0". In the same way, the earlier call as recorded from this number to 41472D3534383838 does not reflect the receiver's address, but was shown as missing at 21:46:54 hrs. and prior to that, the phone call was to no. 8153874489. The caller was shown as Bhupat Lavji Vegad at 21:36:08 hrs., incoming call lasted for 145 seconds. Similarly, at 21:36:08 from mobile no. 8153874489 outgoing duration was 145 seconds . The corelation, if could be drawn of both the mobile numbers, then, the outgoing call was made from 8153874489 to 9662337181, which would mean that the call was made by the deceased to Hareshbhai Fatubha Gohil, but then, if the subsequent calls are considered at 21:56:59 hrs. and 22:27:05 hrs., then, it was not possible for the deceased to call himself from his another no. 9924894116 at his no. 8153874489. The CDR shows 9924894116 belongs to Bhupat Lavji Vegad. Then in that circumstances all the calls referred by the prosecution becomes questionable as have remained unexplained. It cannot be concluded that the deceased – Bhupat Lavji



was using the mobile no. 8153874489. Then further it cannot be conclusively believed that the phone call which lasted for 145 seconds duration was from deceased to A2.

158. On that night, if the complainant would have to suggest that he received a call on 21:39:19 hrs. on his mobile no. 9924109785, then, the presence of the deceased was at Shaktinagar Kuda Road, Opp. Govt. Hospital, Koliyak 3 Bhavnagar, District Bhavnagar. From the referred call at 21:36:08, subsequently as well after the call at 21:39:19 to complainant eight calls were made on that night to various persons and on 8.7.2015, 14 calls were made from deceased mobile no. 8153874489 and the cell ID address for 11 calls out of 14 was Akar Complex Jail Road, Bhavnagar.

159. Three calls from mobile no. 8153874489 to 9924894116 on April 7, 2015 was from Bhupat Lavji Vegad to Bhupat Lavji Vegad himself. On April 8, 2015, two calls were recorded by the same mobile number both in the name



of deceased Bhupat Lavji Vegad at 4:43:06 and 6:33:45 hours.

160. The prosecution has not given any explanation for these call. PW19 I.O. Shri Rameshchandra Dave had produced the CDR of A2 at Exh.78 and deceased at Exh.77. Interestingly no separate CDR of complainant's number is produced, to override the assumption of both the mobile number being used by someone else and not the deceased.

161. Accused no.1 – Gohil Jaydevsinh Fatubha has been alleged to have given single knife blow. PW18 – Investigating Officer – Shri Jaganiya deposed that on 8.4.2015, accused no.1 – Jaydevsinh @ Munno Fatubha Gohil appeared on his own at the police station and in presence of two panchas, the arrest panchnama Exh.18 was drawn, while panch – Raghubha Vajubha Rathod (PW3) has denied of any such arrest panchnama drawn on 8.4.2015. The Panch PW3 has also denied of anything seized from accused no.1. The Investigating Officer – Shri Jaganiya stated that after drawing the Panchnama of



the clothes of the deceased, the accused volunteered to show the weapon being used by him and therefore, on drawing the preliminary Panchnama, they went to the place, where the knife was hidden and in presence of Panchas the Panchnama Exh.28 was drawn. Pravinbhai Bharatbhai Solanki (PW8) was the witness who was examined for the Panchnama Exh.20 who stated that when he was at the Police Station, one Darbar Fatubha was sitting there. The police had inquired about the name and he had given his name as Fatubha, apart from that, he has said nothing to the police. The police thereafter made a personal search of the Panch and according to the Panch PW8 – Fatubha told the police that he wanted to go to Village Gundi and therefore, Fatubha, the witness PW8 and 4-5 police persons had gone in a Government vehicle to Village Gundi. According to the witness, the road was shown by Fatubha and there was some another person along with the witness but he could not name him. Fatubha took them at the bank of the river and from the bushes, he gave the knife to the police, which was with black handle and the blade was



half a foot.

162. In the cross-examination, the panch witness stated that he was from Village Koliyak, which is the residential place of the complainant and the deceased and further stated that the diamond factory of the complainant Kanjibhai was besides his house. He was working in the diamond factory of Vikrambhai at Village Gundi. The witness in the cross-examination affirmed that Jaydevsinh Gohil's (A1) house was burnt and because of that, many persons from Koli Samaj were arrested by the police.

163. In the case of **Anand Jakkappa Pujari @ Gaddadar v. State of Karnataka, 2026 (0) AIJEL-SC 76896 : 2026 (0) INSC 417**, the Hon'ble Supreme Court has explained the procedure to be adopted while drawing discovery Panchnama under Section 27 of the Indian Evidence Act, 1872. It has been noted that the Investigating Officer must call two independent witnesses at the Police Station itself. In their presence, the accused should be asked to make statement as he may desire, pointing out where



the place or article used in commission of offence is hidden. Exact words uttered by the accused should be incorporated in first part of panchnama drawn at the police station, thereafter, police party along with the accused and panch witnesses would proceed to the place led by the accused. If from that place, anything is discovered, that would form second part of panchnama. The Apex Court thus laid down that the condition necessary for applicability of Section 27, (i) discovery of fact in consequences of information received from the accused; (ii) discovery of such facts to be deposed to; (iii) accused must be in police custody when he gave information; (iv) so much of information as relates distinctly to fact thereby discovered is admissible.

164. Section 27 of the Indian Evidence Act lays down that where an accused is in the custody of a police officer and furnishes some information in consequences of which some fact is discovered, then so much of such information as relates distinctly to the fact so discovered can be proved, and it would not matter whether such



information amounts to a confession or not. In accordance to the provision Section 27 of the Evidence Act, the 'information' would consist of a statement made by the accused to the police officer and the police officer if wants to prove the information or part thereof, it must relate distinctly to the fact thereby discovered. The information is allowed to be proved only if that condition is satisfied. 'Information' used in Section 27 means the content or substance of a statement and therefore, the exact information given by the accused while in custody or in other words, the statement made by the accused must be recorded by the Investigating Officer and if pursuant to such information or statement, recovery is made, then that information or statement becomes admissible under Section 27.

165. Here in the present matter, the Investigating Officer - Shri Jaganiya could not state, as to what was the information given by the accused in express terms, in presence of the panchas which had led to discovery as contemplated under Section 27 of the Evidence Act. The



panch witness (PW8) could state that the accused named him as Darbar Fatubha and had told the police that he wants to go to Gundi, apart from that there was no other information given by the accused. The Panch does not state that the accused had volunteered to show the weapon.

166. The muddamal which was sent to FSL, Junagadh included one old knife with the handle at the length of 11.5 cm and the blade at 17 cm length with a breadth of 2.5 cm, which was referred to have been produced by accused– Jaydevsinh Fatubha from the bushes of the bank of the river at Gundi Village. The name of the river has not been recorded, the knife was sent as Mark F. The analysis report records of very light blood on the knife. The muddamal for analysis was sent along with the clothes and blood of deceased Bhupat Lavji.

167. Since the discovery could not be proved by way of Section 27 and when PW14 and PW15 could not identify the weapon which was alleged to be in the hands of the accused – Jaydevsinh, it cannot be concluded that the



muddamal weapon was the same used for the commission of offence.

168. Discovery of the knife, immediately after drawing the blood of the deceased and without proving the process of sealing the blood samples as well as clothes of the deceased and without proving the safe custody of the muddamal knife, prior to sending it to the FSL officer raise doubt more so when the Ravanagi Nondh of the Investigating Officer-Shri Jaganiya is dated 19.4.2015.

169. The Circle Inspector was called on 3.5.2015 to make the map of the place of offence, strangely no map was produced on record.

170. The Panchnama Exh.30 of the place of offence refers to the 'Fine Pan Parlour' and also refers to the presence of the FSL officer – Dr. P.A. Ansari who on meticulous examination of the place of incident had not found any noticeable thing, nor had seized anything from the place of incident. No blood stains were noticed.



171. The witness PW14 and PW15 stated that they had come to 'Fine Pan Parlour' to eat pan masala. The said parlour was closed. The Panchnama Exh.13 drawn in presence of the FSL officer records, one another pan parlour named as 'Ramdev Pan Parlour' there. The said fact also is reflected in the report of the FSL officer – Parvinbanu Ansari. The witness PW14 and PW15 admittedly said that they had not gone to another pan parlour to eat pan masala. As per the evidence of PW14 at about 9 to 9.30, he and PW15 had gone to eat pan masala at Fine Pan Parlour. The incident had taken place thereafter, as according to the complainant, PW12 Kanjibhai, he had received a phone call from his brother at 9.39 night and a definite reliance is placed on the CDR. So accordingly, these 2 witnesses PW14 and PW15 would have certainly be at the place called 'Fine Pan Parlour', prior to PW12 reaching the place. According to PW14 and PW15 and even as per the panchnama, as well as the report of FSL officer, the place of offence is near 'Fine Pan Parlour' while the complainant is showing the place inside his Village Koliyak at 'Dhora'. The complainant himself had



run away from the place of offence instead of rescuing his brother. If at all the complainant was present there, he would have certainly seen PW14 and PW15, who were at the pan parlour and probably, they would have also intervened to protect Bhupatbhai when actually as per prosecution, six of the accused had come to that place. Except a knife in the possession accused no.1, no weapons have been shown in the hands of other accused. What had happened to the magic rickshaw has not been clarified by any of the witnesses, not even the complainant. The I.O. Mr. Jaganiya could not state anything about the 'magic rickshaw'. Shri Jaganiya has affirmed that in the complaint, the fact of magic vehicle present at the place was disclosed and also affirmed that no such magic vehicle was found at the place of incident. The Investigating Officer has also affirmed that he had not seized the clothes of the complainant and the witnesses. The I.O. affirmation is that he had not collected any evidence with regard to deceased having borrowed Rs.3,000/- from the accused. The officer has also stated that it was not disclosed from the complaint



at what 'pan na galla', Shambhubhai and Vipulbhai had gone to eat pan masala. The delay in filing the FIR and the contradiction in the evidence of the I.O.-Shri Jaganiya and the complainant, about the place of recording the complaint goes to the root of the matter as PSO gives evidence that it was on the next day i.e. 8.4.2015 at about 20.00 hrs; he received the complaint to be registered. The delay of almost about 10 hours has remained unexplained, giving ample scope to the witnesses to embroil false facts to implicate people falsely, when enmity between two political parties was eminent, when the evidence was on record that immediately, on 7.4.2015 at about 22.15 hrs. phone call was received from mobile no. 8238015156 of Dr. K.C. Dave from Koliyak hospital, where the history before Doctor was of a Darbar having given a knife blow, and when that Darbar was not identified, the injury appears to have a different story.

172. None of the witnesses including the complainant had disclosed before the Doctor, nor before the I.O. - Shri



Jaganiya, who was continuously with the witnesses at CHC Center, even with the Ambulance and lastly, at the hospital at Bhavnagar, to give the names of the assailants. None of them had cared to give the complaint or inform the police about the incident. The complainant – Lavjibhai (PW12) stated that he had gone to the Police Station to give his complaint, while the FIR registered was on 8.4.2015. The political rivalry has been clearly proved. The interested witnesses have tried to frame more number of persons from Darbar community in the present matter, when the evidence is also on record that the members of Koli community had destroyed the house and shop of the accused as well as one another person of Darbar community and for that offence, FIR had been lodged against the members of the Koli community and the witnesses of the present matter have been made accused in those cases. PW14 and PW15 do not appear to be the natural witnesses. Their evidence do not inspire confidence and the testimony cannot be found to be trustworthy. In the background of the fact that the place of offence is not proved, no blood was found at the place



of offence, the clothes and hands of PW14 – Vipulbhai though he had carried the deceased Bhupatbhai to the dispensary were not found with blood, inspite of the fact, as per the doctor's evidence, that deceased was bleeding profusely , the prosecution case becomes difficult to believe.

173. When the Darbar who was alleged to have given the knife blow, his identity is not proved, the complainant testimony becomes unbelievable, in background of the fact that he ran away from the place, where actually, he had come to confront the accused on behalf of the accused. Instead of protecting his brother and asking for help from the village, he showed himself to have run away from the place. The mysterious two persons who accompanied PW14, their role is also not coming forth. Investigating Officer has no explanation for them, no investigation is made in that direction. Further, the presence of 'Kal Hamara Sangathan' had made impossible a fair and independent investigation.

174. The plea of alibi governed by section 11 of the Evidence



Act, for that the burden is always on the accused to prove. The accused however need not prove his plea of alibi beyond reasonable doubt, it would be enough to show preponderance of probability. Here the A3, A4 and A5 had given application to the Collector, the superior officer of the police as well to the Investigating Officer Shri Jaganiya stating that on that night of incident, they were at a different place. Investigating Officer Shri Jaganiya had not produced any report during the trial, about the result of any inquiry made by him. The Investigating Officer Shri Dave gave evidence that if any earlier officer had made inquiry, then the subsequent officer need not do so. Accordingly, as per his evidence, it appears that Investigating Officer Shri Jaganiya may have made inquiry, but had suppressed the result of his inquiry, probably because it would not be in favour of the prosecution. In that background, A3 and A4 had examined DW1 to prove that they were present during the 'pitru suktam' of Gohil family and DW2 proved the presence of A5 in the volleyball play in the evening. The accused by calling and examining the witnesses have



established the plea in the nature of alibi. The defence witnesses were cross-examined by the Public Prosecutor, however, could not break down the defence of alibi set up by the accused. The Public Prosecutor could not even bring any report of inquiry by Investigating Officer Shri Jaganiya towards the application of A3, A4 and A5 to discharge the burden that the version set by the defence witnesses were false and fabricated. The testimony of defence witnesses are found to be reliable and probable.

174.1 Section 149 of IPC had been invoked to consider the acts of all in prosecution of common object. Investigating Officer Shri Jaganiya could not make any investigation in connection with the common object i.e. the purpose for which all the accused had joined to form the assembly to term as unlawful. Shri Jaganiya deposed that he had not collected evidence to prove that deceased had borrowed Rs.3,000/- from A2. While PW19, the police officer, filing the chargesheet Shri Dave categorically stated that he could not find any evidence with regard to the quarrel in connection with money transaction. In absence of



evidence, we are of the opinion that the prosecution evidence is not sufficient to conclude that any conspiracy was hatched by the appellants with common object to cause the death of Bhupatbhai. The prosecution has failed to even prove the weapon alleged as knife. PW14 and PW15 denied to identify the knife in the Court and PW12 as complainant witness who had run away from the place, his testimony regarding the identity of the knife could not be believed, since panch witness has not proved the recovery of muddamal in accordance to section 27 of the Indian Evidence Act.

174.2 We are of the view that the prosecution had failed to prove that the act alleged was done to accomplish the common object as attributed to the members of the unlawful assembly. The expression 'in prosecution of the common object' has to be strictly construed, the act alleged must be connected with common object, by virtue of nature of object. In the instant case, the foundational evidence are not laid down on this aspect.

174.3 The Trial Court appears to be influenced by the fatal



consequences of a single blow alleged with the knife. The Trial Court failed to appreciate that the foundational facts had not been proved by evidence. The Trial Court thus inferred the common object on the basis of the single blow which became the cause of death.

174.4 The presence of two other persons along with PW14, who had accompanied him, at the CHC centre as well as at the hospital at Bhavnagar even joining PW14 even in ambulance, is a fact in our opinion a suppression which could lead to the conclusion, couple with other evidence as discussed hereinabove that the genesis of the incident has been given a misturn. From the evidence of complainant, one can draw a conclusion that he was not actually present at the place, which he states to be 'Dhora' to have witnessed the incident. By way of the analysis of the evidence of PW12, PW14 and PW15, it can be concluded that prosecution failed to prove the presence of all the accused at the place of incident in prosecution of common object or to even prove that A1 inflicted the knife blow. We are thus of the opinion that



the prosecution failed to prove the case beyond all reasonable doubt, that accused had gathered with the intention to commit murder, to even draw vicarious liability of all the accused to be in the unlawful assembly in prosecution of common object. In view of what we have discussed above, we find that the judgment of conviction and sentence of life imprisonment is erroneous and is required to be set aside.

175. Hence, all the appeals are hereby allowed.

175.1 The judgment and order of conviction and sentence dated 30.11.2019 passed by the learned Sessions Judge, Bhavnagar in Sessions Case nos. 124/15 and 153/15 convicting and sentencing the appellants is hereby set aside. All the pending applications, thus, stand disposed of.

175.2 The appellants are acquitted of all the charges levelled against them. Bail bond stands discharged.

175.3 The appellant–Gohil Jaydevsinh @ Fatubha, in judicial custody, be released forthwith by the concerned jail



authority, if his custody is not required in connection with any other offences.

175.4 Registry is directed to transmit the copy of this judgment by Email to the concerned Jail Superintendent.

175.5 Record and proceedings be sent back to the concerned Trial Court forthwith.

175.6 Direct service is permitted.

(GITA GOPI,J)

(L. S. PIRZADA, J)

Maulik